No. 73-861

In the Supreme Court of the United States

OCTOBER TERM, 1973

Supreme Court, U. S.
FILED
DEC 3 1973
MICHAEL RODAK, JR., CLERK

EAST CARROLL PARISH SCHOOL BOARD,
AND EAST CARROLL PARISH POLICE JURY,

Petitioners,

v.

STEWART MARSHALL,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES FIFTH CIRCUIT COURT OF APPEALS

JOHN F. WARD, JR.,
770 North Street,
Baton Rouge, Louisiana 70802.

CHARLES R. BRACKIN,
Varco Building,
405 Morgan Street,
Lake Providence, Louisiana 71254.

TABLE OF CONTENTS

Page

CITATIONS TO OPINIONS BELOW 1

JURISDICTION 2

QUESTION PRESENTED 2

STATUTES INVOLVED 3

STATEMENT OF THE CASE 3

REASONS FOR GRANTING WRIT

I. Court of Appeals decision conflicts with decisions of this Court 12

II. Court of Appeals decision, if not in conflict, raises a substantial federal question which should be resolved 14

III. Court erred in reversing District Court findings of fact on record before it 16

IV. The reapportionment plan with least deviation and least dilution should be approved 19

CONCLUSION 20

CERTIFICATE 21

APPENDIX

A. Opinion and decree of United States District Court for Western District of Louisiana 23

B. First opinion of Court of Appeals for the Fifth Circuit 27

C. En banc opinion of Court of Appeals for the Fifth Circuit 43

Page

D. Louisiana Revised Statutes, Title 33, Section 1221 81

E. Louisiana Revised Statutes, Title 17, Sections 71.1 through 71.6 83

TABLE OF AUTHORITIES

Cases Cited *Page*

Burns v. Richardson, 384 U.S. 73 (1966) 12

Carroll v. Monroe City School Board, ___ F.2d ___ (No. 72-2505, Fifth Circuit, September 13, 1973) 16

Dyer v. Love, 307 F.Supp. 974 (1969) 6

Focash v. Addison Crane Company, Inc., 120 App. D.C. 308 18

Fortson v. Dorsey, 379 U.S. 433 (1965) 12

Kirkpatrick v. Preisler, 394 U.S. 526, 22 L.Ed.2d 519, 89 S.Ct. 1225 19

Reynolds v. Sims, 377 U.S. 533, 12 L.Ed.2d 506, 84 S.Ct. 1362 19

Whitcomb v. Chavis, 403 U.S. 124 (1971) 12, 19

White v. Regester, ___ U.S. ___, 37 L.Ed.2d 314 (1973) 12, 13, 19

Constitutional Provisions Cited

U.S. Const., Amend. XIV 3, 7

U.S. Const., Amend XV 3, 7

United States Statutes Cited

28 U.S.C. Sec. 1254(1) 3

42 U.S.C. 1971, 1973(c) 3, 7

Louisiana Statutes Cited

LRS 17:52 4

LRS 17:71.1-71.6 ..... 3, 4, 5, 6

LRS 33:1221, et seq 3, 4, 5, 6

No._____

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EAST CARROLL PARISH SCHOOL BOARD,
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v.

STEWART MARSHALL,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES FIFTH CIRCUIT COURT OF APPEALS

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioners pray that a writ of certiorari issue to review the decision of the United States Court of Appeals for the Fifth Circuit, en banc, on rehearing, rendered on September 12, 1973, reversing its previous decision entered on August 3, 1972.

CITATIONS TO OPINIONS BELOW

The decision of the District Court is unreported and is printed as Appendix "A" hereto, page 23. The original panel decision of the Circuit Court of Appeals is printed as Appendix "B" hereto, page 27, and is reported in 467 F.2d 1381. The decision of the Circuit Court of Appeals on rehearing en banc is

unreported and is printed as Appendix "C" hereto, page 43.

JURISDICTION

Judgment of the District Court was entered on August 2, 1971. The original judgment of the Court of Appeals was entered on August 3, 1972. Rehearing was granted, and the opinion of the Court of Appeals on rehearing en banc was entered on September 12, 1973. On October 29, 1973, the Court of Appeals stayed the issuance of mandate through December 2, 1973, pending this application for writ of certiorari. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254(1).

QUESTION PRESENTED

Does a reapportionment plan for a small political subdivision which provides for residence requirements but at large elections unconstitutionally dilute Negro voting strength where Negroes constitute a 58.7 percent majority of the population, and the District Court specifically found:

A. That the evidence adduced by intervenor failed to show that the plan offered by the two aforesaid public bodies would discriminate against blacks or in any manner dilute the black population;

B. That the plan recommended by East Carroll Parish Police Jury and East Carroll Parish School Board has actually been in effect in East Carroll Parish since December 2, 1968, and the plan has not proved discriminatory against blacks;

C. That the plan of reapportionment offered by East Carroll Parish Police Jury and East Carroll Parish School Board is more satisfactory than other plans presented because it offers a zero deviation while all other plans considered did not.

D. That the plan of reapportionment offered by East Carroll Parish Police Jury and East Carroll Parish School Board does not dilute nor discriminate against the black population as the new voting unit from which officers of the jury and the board are to be elected is comprised of 58.7 percent blacks, or a substantial majority of blacks, while other plans considered diluted the black population of different areas within the parish significantly greater than the plan offered by the jury and school board.

And, in subsequent elections held under the at large plan while this case has been on appeal, Negroes were elected to two of the three seats available.

STATUTES INVOLVED

The statutes and constitutional provisions involved in this case are the Fourteenth and Fifteenth Amendments to the Constitution of the United States of America; 42 U.S.C. 1973(c); Louisiana Revised Statutes, Title 33, Section 1221 (Louisiana Act 445 of 1968); Louisiana Revised Statutes, Title 17, Section 71.1 through 71.6 (Louisiana Act No. 561 of 1968).

STATEMENT OF THE CASE

Jurisdiction of the District Court was invoked by the original plaintiff because of a question arising

under the Fourteenth Amendment to the United States Constitution.

The jurisdiction of the District Court was invoked by intervenor-respondent because of questions arising under the Fourteenth and Fifteenth Amendments to the United States Constitution and the Voting Rights Act of 1965.

Prior to 1968 the parishes (counties) of Louisiana were divided into geographical wards. The members of the governing authority of the parish, the police jury, were elected from those wards according to a population formula. LRS 33:1221, 1222, 1223, and 1224. At the same time, LRS 17:52 provided, with respect to the school board in each parish, that the voters of each police jury ward would elect a member of the school board for such parish for each police juror in said ward.

However, when the Louisiana Legislature convened in May of 1968, both the Louisiana School Boards Association and the Police Jury Association, anticipating the need to reapportion under applicable decisions of this Court, proposed legislation to amend and/or repeal the existing statutes so as to permit each school board and police jury to reapportion itself in accordance with law.

As a result, the Louisiana Legislature of 1968 adopted Act 445 repealing the above referred to provisions relating to police juries and replaced them with basically one provision which permitted the police jury to reapportion itself and to determine the number of members it would have and how they would be elected.

(LRS 33:1221) (Appendix "D") The Legislature likewise adopted Act 561 of 1968 also repealing the above quoted sections relative to school boards and replacing it with a thorough revision (LRS 17:71.1 through 71.6) permitting school boards to reapportion themselves completely independent of the police jury and gave them permissive authority to utilize at large elections. (See Appendix "E")

These two acts became effective on July 20, 1968, prior to the original complaint being filed in this case. Pursuant to this authorization, the East Carroll Police Jury appointed a reapportionment committee to study the reapportionment of that body. However, before that body could decide how it wanted to reapportion itself, the original complaint was filed herein in July, 1968, contending that the two bodies were malapportioned and requesting the District Court to order their reapportionment.

As a result of this complaint the District Court enjoined the upcoming election and ordered both bodies to submit constitutionally acceptable reapportionment plans to it. Subsequently, the East Carroll Parish Police Jury submitted to the Court a reapportionment plan, concurred in by the School Board, providing that one resident police juror and one resident school board member would be elected from each of newly created Wards Numbers 1, 2, 4, 5, 6 and 7, and three police jurors and three school board members from newly created Ward 3, but with all members of the Police Jury and School Board to run at large throughout the entire parish. This plan of reapportionment was approved by the District Court on December 2, 1968,

with subsequent elections to be held in accordance therewith.

Subsequent thereto, on June 26, 1969, and September 10, 1969, the Attorney General of the United States notified the Attorney General of Louisiana that he was interposing an objection to Acts 445 and 561 of the 1968 Legislature, indicating that his objection was directed at that feature of the act which would permit multi-member districts. Also, on August 7, 1970, the Attorney General advised the East Carroll Police Jury that it could not implement its reapportionment plan because of his objection entered to Acts 445 and 561 which rendered such enabling legislation inoperable under *Dyer v. Love*, 307 F.Supp. 974 (1969), even though the District Court had approved and ordered implementation of the plan prior to the Attorney General's objection.

The Louisiana School Boards Association immediately pointed out to the Attorney General that since any reapportionment plan of any local political subdivision must be submitted to him for approval, any discriminatory use of the at large feature of the state act could be objected to by him at that time and that it was not objectionable until used in a discriminatory manner by some school board. Although discussions with the Attorney General in early 1970 left us expecting official withdrawal of his objections to the enabling legislation, it was not until after further discussion and correspondence that the Attorney General officially withdrew his objection by letter of April 14, 1972.

In the meantime, the District Court on its own

motion on February 17, 1971, requested the Police Jury and School Board to resubmit reapportionment plans based upon the official 1970 census. Pursuant to that request, on March 11, 1971, each body resubmitted the same plan previously approved, as the 1970 census figures did not change the deviation or render the previous reapportionment plan defective in any way.

On May 6, 1971, respondent, Stewart Marshall, intervened in this matter alleging that the at large system of elections violated his rights and others similarly situated by diluting the voting strength of black voters in East Carroll Parish in violation of the Fourteenth and Fifteenth Amendments to the United States Constitution, the Voting Rights Act of 1965, 42 U.S.C. 1971, et seq., and because the reapportionment plan was contrary to the laws of Louisiana in that the Attorney General's objection voided Acts 445 and 561 and there was, therefore, no authority for at large elections. Intervenor filed two alternate plans for reapportionment, both of which consisted of both single and multi-member districts. The District Court ordered the Police Jury and School Board to file alternative plans, which they did, although reiterating their beliefs that the existing at large system was the best.

The original plaintiff did not participate in any proceedings in this case subsequent to the above intervention. The Governor of Louisiana and other state officials were only nominal parties in interest and have also not participated in these proceedings.

On July 29, 1971, the District Court held a hear-

ing during which intervenors presented statistical evidence and witnesses who testified that in their opinion the at large plan was discriminatory as to blacks and would dilute their voting strength. The substance of their testimony was that, in their personal opinion, even though blacks constituted 58.7 percent of the population of the parish, they might not all vote for a black candidate; and, therefore, blacks might not get elected. The District Court also had before it opposing testimony of persons who testified as to the benefits to be derived from the at large system. In addition, the District Court also had before it the fact that two black members of the Police Jury had voted for the at large proposal although the black member of the School Board had voted against it.

Furthermore, as pointed out by Judges Clark, Dyer, Morgan and Roney in their dissent to the en banc majority opinion

> "The proof adduced in the District Court concerning the operation of the at-large election plan which governed the 1970 elections in this parish disclosed that a black candidate in the primary election for the Police Jury was defeated by only 9 votes. Another black candidate qualified for the second primary in which he ran third, 12 votes behind the second place white candidate. *A third black candidate won in his contest against the incumbent [white] president of the Police Jury, polling more votes than any candidate, not just for this post but in the entire election.*"

After considering all of the evidence, statistics, testimony of witnesses and all of the plans presented, the District Court on August 2, 1971, issued its order

and judgment reapproving the previously approved at large plan and setting forth the following seven specific findings of fact:

1. That according to the 1970 U.S. Census, East Carroll Parish has a total population of 12,884 persons of which number 7,568 are blacks and 5,306 are whites and other nationalities; that the black population of East Carroll Parish, Louisiana, comprises 58.7 percent of the total population.
2. That the plan of reapportionment offered by East Carroll Parish Police Jury and East Carroll Parish School Board is more satisfactory than other plans presented because it offers a zero deviation while all other plans considered did not.
3. That the plan of reapportionment offered by East Carroll Parish Police Jury and East Carroll Parish School Board does not dilute nor discriminate against the black population as the new voting unit from which officers of the jury and the board are to be elected is comprised of 58.7 percent blacks, or a substantial majority of blacks, while other plans considered diluted the black population of different areas within the parish significantly greater than the plan offered by the jury and school board.
4. That the plan recommended by East Carroll Parish Police Jury and East Carroll Parish School Board has actually been in effect in East Carroll Parish since December 2, 1968, and the plan has not proved discriminatory against blacks.
5. That the plan represents the wishes of both public bodies, having been endorsed by two of

the three black public officials now serving on these public bodies.

6. That the plan of apportionment offered by East Carroll Parish Police Jury and East Carroll Parish School Board is a constitutionally acceptable plan and meets all of the requirements of the "one-man, one-vote" rule of law.
7. That the evidence adduced by intervenor failed to show that the plan offered by the two aforesaid public bodies would discriminate against blacks or in any manner dilute the black population.

Findings 1, 2 and 6 dealt primarily with the one-man, one-vote rule *but* findings 3, 4, 5 and 7 dealt specifically with the question of dilution of the strength of black voters and clearly found that there was no *proof* of discrimination or dilution, that the plan in operation had not operated to discriminate or dilute black voting strength, and that the other plans diluted the black population of different areas within the parish significantly greater than the plan offered by the Police Jury and School Board.

Respondent then noticed his appeal to the Fifth Circuit Court of Appeals on August 9, 1971. Respondent's brief was filed with the Court of Appeals on December 1, 1971, with petitioner's brief following on December 15, 1971, with oral argument heard on April 5, 1972. On March 23, 1972, respondent filed a motion with the District Court praying that the order of August 2, 1971, then on appeal to the Court of Appeals, be withdrawn and a new reapportionment plan, filed with his motion, be ordered. The District Court, for some inexplicable reason, without the benefit of

additional evidence, argument, or possibility of opposition by petitioner, issued such an order as prayed for by respondent. The Court of Appeals in its original decision of August 3, 1972, properly found that since the matter was on appeal, the District Court was without jurisdiction to enter the order of March 27, 1972, and vacated the order.

After this case was originally briefed and argued and at approximately the time of the original panel decision affirming the District Court in August, 1972, additional elections were held under the at large plan for three of the nine school board posts. (School board members in Louisiana are elected for terms of six years with approximately one-third (1/3) of the members of each board standing for election every two years.) Of the three School Board seats up for election in East Carroll in 1972, two blacks and one white candidate were elected under the at large plan. It is worth noting here that the incumbent black School Board member who voted against the at large plan and testified against it in the District Court, was overwhelmingly re-elected in these 1972 at large elections.

After the panel decision of August 3, 1972, respondent applied for a rehearing which was granted en banc and resulted in the nine to six split decision reversing the District Court and the previous panel decision of August 3, 1972. Six members of the Court of Appeals felt constrained to submit dissenting opinions. It is from this decision that petitioner applies to this Court for writ of certiorari.

REASONS FOR GRANTING THE WRIT

I. The en banc decision of the Court Below in the instant case reversing its panel decision and the decision of the District Court by a narrow nine to six margin has decided an important federal question of reapportionment in a manner in conflict with applicable decisions of this Court in *Fortson v. Dorsey*, 379 U.S. 433 (1965); *Burns v. Richardson*, 384 U.S. 73 (1966); *Whitcomb v. Chavis*, 403 U.S. 124 (1971); and *White v. Regester*, ___ U.S. ___, 37 L.Ed.2d 314 (1973).

These cases have consistently held that multi-member districts are not per se unconstitutional although subject to attack when they have been used invidiously to cancel out or minimize the voting strength of racial groups. This Court has always, however, placed the burden of proof on the plaintiff attacking the multi-member districts to prove the discrimination and dilution. *White v. Regester* and *Whitcomb v. Chavis*, supra.

In the instant case the District Court clearly found that respondent here had not carried the burden of such proof during the trial and that evidence of the plan, in actual operation, refuted any allegation of discrimination or dilution. His findings were affirmed by the original panel decision of the Court below.

The reversal of these findings by a bare majority of the Court of Appeals sitting en banc would seem to be directly in conflict with the decision of this Court in the cited cases, particularly *Whitcomb v. Chavis* and *White v. Regester*, supra.

In *Whitcomb v. Chavis* this Court reversed a finding of the District Court that the multi-member districts would result in discrimination and dilution even though there was more possibility of same (Negroes being in the minority) than in the instant case. On the other hand, in *White v. Regester*, (which is similar to this case only in that Mexican-Americans constituted a majority of the population in Bexar County, Texas) this Court merely affirmed the District Court's findings that the large multi-member districts of Dallas and Bexar Counties diluted the voting strength of blacks in Dallas County and of Mexican-Americans in Bexar County. In affirming the District Court's findings with respect to the multi-member plan for Dallas County, this Court merely said:

> ". . . *these findings* and conclusions are sufficient to sustain the *District Court's judgment* with respect to the Dallas multi-member district and, *on this record, we have no reason to disturb them. . .*" (Emphasis added)

And with respect to Bexar County,

> "The District Court apparently paid due heed to Whitcomb v Chavis, supra, did not hold that every racial or political group has a constitutional right to be represented in the state legislature, but did, *from its own special vantage point*, conclude that the multimember district, as designed and operated in Bexar County, invidiously excluded Mexican-Americans from effective participating in political life, specifically in the election of representatives to the Texas House of Representatives. *On the record before*

> *us, we are not inclined to overturn these findings*, representing as they do a blend of history and an *intensely local appraisal of the design and impact* of the Bexar County multimember district *in the light of past and present reality, political and otherwise.* (Emphasis added)

In the instant case, the District Court has also made an on-the-ground and "intensely local appraisal" from its "own special vantage point" and found that the at large system as designed and operated in East Carroll Parish did not invidiously exclude Negroes from effective participation in political life.

This District Court's findings, likewise, and on this record, should not have been overturned by the Court below in view of the decisions of this Court, and such action would appear to be in direct conflict with the above cited decisions of this Court.

II. Even if the en banc decision of the Court below is not in direct conflict with the cited decisions of this Court, it would appear clear that the decision, at the very least, has decided an important question of federal law which has not been, but should be, settled by this Court.

It apparently stands for the proposition that no matter what findings are reached by the trier of facts, the District Court, that no political subdivision in the South, no matter what its size may be, its population, its ethnic make-up, or the actual effects in operation of its reapportionment plan, may have the members of its governing authority elected from multi-member districts or elected at large.

Even though the United States District Courts in Louisiana have rejected some reapportionment plans containing multi-member districts, they have likewise approved other plans containing multi-member districts. The en banc decision in the instant case would appear to invalidate all previously approved multi-member district plans.

It would also seem to invalidate the historical structure and organization of some school boards in Louisiana which have always, since they were created by the Legislature, had their members elected at large within the entire parish. The reason for such at large structure and organization is that since a school system serves all the children in the parish, each member of the board should feel a responsibility for the improvement of all schools in the parish and should be responsible to all of the people in the parish.

One such example is the Monroe City School Board, which was created by the Legislature in 1900 with five members consisting of the mayor of the City of Monroe and four members elected at large. The act creating the Monroe City School Board was amended in 1947 to eliminate the mayor as a member but providing for the election of a replacement member at large. Although the creation of this School Board with such internal structure and organization had nothing to do with race, this same District Court required that School Board (which was perfectly apportioned and had no change in election procedure to submit to the Attorney General under the Voting Rights Act of 1965) to change its structure and or-

ganization from at large elections to single member districts because there was a geographically recognizable Negro *minority* population in the city. The Court of Appeals affirmed without opinion under Fifth Circuit Local Rule 21, citing only the instant cast for authority. See *Carroll v. Monroe City School Board*, _____ F.2d _____ (No. 72-2505, Fifth Circuit, September 13, 1973)

Another such example is the Orleans Parish School Board, which has also historically been structured and organized so as to be composed of five members elected at large from Orleans Parish. Although a Negro candidate was narrowly defeated in a recent second primary, his defeat had nothing to do with race and the sole issue in the campaign was union organization of teachers. Moreover, another Negro is presently serving a six-year term on the School Board and last year served as president of the Board. Must the Orleans Parish School Board now restructure and organize itself because of this decision of the Court Below?

III. Although the en banc decision of the Court of Appeal found that "the District Court erred in finding that the at large plan did not dilute the black vote in East Carroll . . . .", it did not find the District Court's finding to be "clearly erroneous" or "manifest error" as required under Rule 52 of the Federal Rules of Civil Procedure. Clearly, there was substantial evidence to support the trial court's finding of fact as to dilution. Population of the parish was majority black and blacks had been elected under

the at large plan. In addition, two of the three black members of these two governing bodies voted for the at large plan.

Although the Court Below referred to ". . . a panoply of factors . . ." which this Court had supposedly identified which may contribute to the existence of dilution, most of the factors mentioned by the Court are not present in the record in this case. Even if there is some evidence in the record from testimony of some witnesses, the trial court who heard the witnesses clearly found that their testimony was not sufficient. For example, there is nothing in the record to support a lack of access to the process of slating candidates, or the unresponsiveness of legislators. In East Carroll Parish there is no slating of candidates. Ninety-five percent of the voters, black and white, in East Carroll Parish are registered as Democrats. Election in the Democratic primary is tantamount to election. Any registered Democrat can become a candidate for office in the Democratic primary and the Democratic party, as such, makes no attempt whatever to slate any particular candidates. Furthermore, although the Court cites as one factor, "the lack of provision for at large candidates running from particular geographical subdistricts" the plan under attack does provide for the at large candidates to run from a particular geographical subdistrict.

Taken all in all, it is virtually impossible for the Court Below to have found the findings of fact of the District Court to be "clearly erroneous." As

was held by the Court in *Focash v. Addison Crane Company, Inc.*, 120 App. D.C. 308, 346 F.2d 420,

> The question is not whether the Court of Appeals would have reached the same result but whether there is substantial evidence to support the findings and conclusions of the trier.

It would also appear that the Court of Appeals erred in refusing to consider the results of the 1972 elections under the at large plan which occurred while this matter was on appeal. Not only were the results of these elections tendered to the Court on appeal, they are matters of public knowledge of which the Court could take judicial notice. At the very least, the Court should have remanded to the District Court in order that evidence of the result of those elections could have been introduced and considered by the District Court. Obviously, they would have reinforced the District Court's previous findings as he had considered the 1970 elections under the at large plan at the 1971 hearing. Furthermore, the one black official who voted against the at large plan, and testified in Court against it, was overwhelmingly re-elected in 1972 under the at large plan.

The second reason assessed by the en banc opinion for not considering the 1972 elections is a rather tenuous suggestion that some politicians at some time might support a black candidate because it is politically expedient. If so, it would not be the first time that one politician has supported another politician because it is politically expedient.

Clearly, these tenuous possibilities mentioned by the en banc decision are not sufficient to overturn the findings of the District Court who specifically found that they did not happen and certainly these tenuous possibilities are not what this Court was referring to in *Whitcomb v. Chavis*, supra, when it reversed the District Court finding of dilution which was based on far more solid reasoning than the tenous possibilities discussed by the *Court of Appeals* here, or in *White v. Regester*, supra, when it declined to overturn the *on the ground findings of the District Court.*

IV. In *Burns v. Richardson*, supra, this court had indicated that it was the responsibility of the state (the appropriate political subdivision) to properly reapportion itself. The two public bodies in the instant case had completed reapportionment almost three years prior to the respondent appearing in this matter.

This court had further indicated in *Reynolds v. Sims*, 377 U.S. 533, 12 L.Ed.2d 506, 84 S.Ct. 1362, and *Kirkpatrick v. Preisler*, 394 U.S. 526, 22 L.Ed.2d 519, 89 S.Ct. 1225, that a public body reapportioning itself should attempt to devise a plan with the least possible deviation. The plan adopted by these two public bodies complies with that admonition in that their plan contains no deviation at all.

While the en banc opinion of the court below appears to erroneously reverse the finding of the District Court that there is no dilution, as pointed out herein before, it did not reverse the District Court's finding No. 2 that the plan of these public bodies

> "... is more satisfactory than other plans presented because it offers a zero deviation while all other plans considered did not."

or the District Court's finding No. 3 that

> "... other plans considered diluted the black population of different areas within the parish significantly greater than the plan offered by the jury and school board ..."

It would appear clear from the cited decisions of this court, as well as other decisions of the court below, that although a particular apportionment plan may have some dilutive (or possibly dilutive) effect on black voting strength, it is still to be preferred, and approved, where it has less deviation and less dilutive effect than other plans before the court.

It would appear clear that this principle is particularly applicable in the instant case and the district court should have at least been affirmed on that basis.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

John F. Ward, Jr.
Counsel for Petitioners

CERTIFICATE

I, John F. Ward, Jr., attorney for petitioners and a member of the Bar of the United States Supreme Court, do hereby certify that on this 30th day of November, 1973, I served copies of the foregoing petition for writ of certiorari on the attorneys of record for respondent herein, Mr. Stanley A. Halpin, Jr., and Mr. George M. Strickler, Jr., by mailing three copies of same, postage prepaid, to them at their offices at 906 Carondelet Building, 226 Carondelet Street, New Orleans, Louisiana, 70130, and 1110 Royal St., New Orleans, La. 70116, respectively.

John F. Ward, Jr.
Counsel for Petitioners

Appendix A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

CHARLES F. ZIMMER (Civil Action No. 13927)

VERSUS

JOHN J. MCKEITHEN ET AL

*** * ***

DECREE PROVIDING FOR THE REAPPORTIONMENT OF POLICE JURORS AND SCHOOL BOARD MEMBERS IN EAST CARROLL PARISH, LOUISIANA, ETC.

This Court having ordered East Carroll Parish Police Jury and East Carroll Parish School Board to submit their constitutionally satisfactory plans for the reapportionment of their respective bodies in accordance with the "one man - one vote" rule announced in *Avery vs. Midland County, Texas,* (Sup. Ct., April, 1968) 88 S. Ct. 1114, and subsequent cases; and East Caroll Parish Police Jury and East Carroll Parish School Board having submitted their respective plans for reapportionment to this Court; and intervenor having submitted a plan of reapportionment for each of said bodies as well as alternate plans of reapportionment; and the Court having conducted a hearing on July 29, 1971, at which the witnesses called by the respective parties were examined and cross-examined by the parties and the court; and the court having considered all plans presented as well as all alternate

plans proposed by the parties hereto, it has made the following finding of facts:

1. That according to the 1970 U. S. Census, East Carroll Parish has a total population of 12,884 persons of which number 7,568 are blacks and 5,306 are whites and other nationalities; that the black population of East Carroll Parish, Louisiana, comprises 58.7 percent of the total population.

2. That the plan of reapportionment offered by East Carroll Parish Police Jury and East Carroll Parish School Board is more satisfactory than other plans presented because it offers a zero deviation while all other plans considered did not.

3. That the plan of reapportionment offered by East Carroll Parish Police Jury and East Carroll Parish School Board does not dilute nor discriminate against the black population as the new voting unit from which officers of the jury and the board are to be elected is comprised of 58.7 percent blacks, or a substantial majority of blacks, while other plans considered diluted the black population of different areas within the parish significantly greater than the plan offered by the jury and school board.

4. That the plan recommended by East Carroll Parish Police Jury and East Carroll Parish School Board has actually been in effect in East Carroll Parish since December 2, 1968, and the plan has not proved discriminatory against blacks.

5. That the plan represents the wishes of both

public bodies, having been endorsed by two of the three black public officials now serving on these public bodies.

6. That the plan of apportionment offered by East Carroll Parish Police Jury and East Carroll Parish School Board is a constitutionally acceptable plan and meets all of the requirements of the "one-man, one-vote" rule of law.

7. That the evidence adduced by intervenor failed to show that the plan offered by the two aforesaid public bodies would discriminate against blacks or in any manner dilute the black population.

ACCORDINGLY, IT IS HEREBY ORDERED, AND DECLARED that East Carroll Parish, Louisiana, be and it is hereby reapportioned as follows:

East Carroll Parish, Louisiana, be and it is hereby subdivided into seven wards, each of which shall conform to the same geographical boundaries and areas as the existing wards; each newly created ward shall be numbered as the existing ward which it replaces; that one (1) Police Juror and one (1) School Board member shall be elected from each of the newly created wards numbered 1, 2, 3, 4, 6, and 7, and three (3) Police Jurors and three (3) School Board members from the newly created Ward Three (3), all Police Jurors and School Board members to be elected at large throughout East Carroll Parish, Louisiana; and that the newly created Police Jury offices and School Board offices be filled as the terms of the present office holders expire, according to and

in the manner prescribed by the Louisiana election laws applicable thereto.

IT IS FURTHER ORDERED, that all or any part, of any order previously issued herein which is in conflict herewith is hereby revoked and rescinded.

Signed at Shreveport, Louisiana, this 2nd day of August 1971.

/s/ BEN C. DAWKINS, JR., Chief Judge,
United States District Court for the
Western District of Louisiana

Approved as to form:

/s/ WILLIAM B. RAGLAND, JR.
Attorney for East Carroll Parish
Police Jury and East Carroll
Parish School Board

Appendix B

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 71-2649

CHARLES F. ZIMMER,
Plaintiff,

STEWART MARSHALL,
Intervenor-Appellant,

versus

JOHN J. McKEITHEN, ET AL,
Defendants-Appellees.

Appeal from the United States District Court for the Western District of Louisiana

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(August 3, 1972)

Before GEWIN, COLEMAN and INGRAHAM, Circuit Judges.

COLEMAN, Circuit Judge: East Carroll is a small parish (county) located in the northeast corner of Louisiana. It adjoins the Mississippi River on the east and the State of Arkansas on the north. The area of the

parish is 452 square miles. In 1970, it had 7568 black and 5316 white inhabitants; 59% black and 41% white. Lake Providence, the parish seat, has a population of 6183, about half of all the people in the parish. The remaining populace is scattered over an area of 450 square miles, at an average population density of fifteen persons per square mile.

Since 1968, the parish has been embroiled in litigation over the one man-one vote apportionment of its wards for the election of police jurors (county commissioners) and school board members. As they existed in 1968 the wards fell far short of compliance with the one man-one vote rule. The sole issue is the method to be used in bringing the parish into compliance with that constitutional principle.

The litigation was initiated by a white citizen of the parish, who sought enforcement of the rule. Thereafter, Stewart Marshall was allowed to intervene on behalf of himself and the class of black voters in East Carroll. The intervenor urged that allowing the police jury and school board to be elected from the parish at-large denied the rights of black voters secured by the Fourteenth Amendment, the Fifteenth Amendment, and the Voting Rights Act of 1965. However, no three judge court was convened as required in Voting Rights Act cases. See *Allen v. Board of Electors*, 1969, 393 U.S. 544 and *Perkins v. Matthews*, 1971, 400 U.S. 379.

This appeal emanates from a hearing held on August 2, 1971, after which the District Court adhered to its

previously adopted parish at-large election plan. Notice of appeal, with the necessary appeal bond, was filed on August 9, 1971. The plaintiff's brief in this Court was filed December 1, 1971. The appellees' brief followed on December 15. Oral argument in this Court was scheduled for, and did take place, April 5, 1972.

In the meantime the original plaintiff was allowed to withdraw and the litigation was pursued by the intervenors.

On March 23, 1972, the plaintiff-intervenor-appellant, Stewart Marshall, filed a motion before the District Court, praying that the order of August 2, 1971, *then on appeal to this Court*, be withdrawn and that the parish officers be elected by wards according to a plan of population equalization which was filed with the motion.

On March 27, 1972, the District Court by detailed order, approved the plan thus submitted, reapportioning the parish by wards, and directing that police jury and the parish school board should be elected accordingly. The wards were of unequal population, so in some instances more than one official was to be elected from a particular ward, depending on its population quotient.

In the absence of exceptions not applicable to the situation now before us, once an appeal is taken, jurisdiction passes to the appellate court, *Turner v. HMH Publishing Company*, 5 Cir., 1964, 328 F.2d 136, 137;

Janousek v. Doyle, 8 Cir., 1963, 313 F.2d 916, 920; *Thompson v. Erb*, 3 Cir., 1957, 240 F.2d 452, 454.

The District Court was therefore without jurisdiction to enter the order of March 27, 1972. Since the defendants have duly appealed its entry that order is hereby vacated.

This leaves for disposition the judgment of August 2, 1971, *the original subject of this appeal.* That judgment was the result of a hearing conducted on July 29, 1971, at which the parties to the litigation submitted several plans of reapportionment and witnesses were examined.

The District Court then found that the black population of East Carroll comprised 58.7% of the parish, that the plan of reapportionment offered on behalf of the police jury and school board was more satisfactory than any other plans presented because it offered a "zero deviation" while the other plans did not; that the plan did not discriminate against the black population nor dilute its voting strength, whereas other plans did dilute the black population of different areas within the parish; that the plan adopted had been endorsed by two of the three black public officials then serving on the police jury and the school board; hence the plan would be approved by which the parish would be divided into seven wards and that one police juror and one school board member would be elected from each of the wards, except that three would be elected from Ward 3, with all officials to be "elected at-large throughout East Carroll Parish".

As stated, this is the judgment now before us for review.

On appeal, Stewart Marshall, and the class he represents, do not contend that the District Court findings are clearly erroneous. They do urge that the District Court was without power to order parish at-large elections because under Section 5 of the Voting Rights Act of 1965 the Attorney General of the United States had duly objected to Louisiana statutes which would have permitted at-large elections for school board and police juries. The Attorney General held, as a general proposition, that such elections discriminated against Negro voters on account of their race and denied them an effective voice in the election of parish officials. The Attorney General thus denied approval to state statutes of general application and appellants say this was binding on the District Court in the exercise of its equity jurisdiction in a case primarily concerning the application of the one man-one vote rule.

It must be noted that this is not a case in which a legislature, board, or commission attempted to reapportion itself. In such a case, Section 5 clearly applies. What we have here is an adversary action, invoking the equity jurisdiction and the equitable adjudication of the District Court. As the Supreme Court succinctly said in *Connor v. Johnson*, 402 U.S. 690, 91 S.Ct. 1760, ____ L.Ed.2d ____, and as this Court said in *Sheffield v. Itawamba County Board of Supervisors*, 5 Cir., 1971, 439 F.2d 35, *court ordered plans* resulting from equitable jurisdiction over adversary proceedings are not controlled by Section 5. If this were not

so, the exercise of jurisdiction by the courts would be meaningless. The Attorney General has no authority to review or to set aside the judgments of courts duly entered in the exercise of their jurisdiction over the parties and the subject matter.

Allen v. Board of Elections, 393 U. S. 544 (1969) was concerned with legislative enactments, not judicial determinations. Neither had there been any prior litigation or judicial determination in *Perkins v. Matthews*, 400 U.S. 379 (1971).

On June 3, 1971, the Supreme Court entered its Per Curiam opinion-order in *Connor v. Johnson, supra. Connor* involved the election of twelve Representatives from Hinds County, Mississippi, pursuant to a court ordered plan of reapportionment. The Three-Judge District Court had directed that these twelve state legislators be elected from the county at-large. The Supreme Court, on the representations contained in the briefs and on the language contained in the lower court decision, directed the District Court, "absent insurmountable difficulties, to devise and put into effect a single-member district plan * * * *."

It is to be noted, however, that Hinds County had a population of 214,973 and a representative was required for a population norm of 18,171 per seat. In an at-large election the candidate would have to make the race before 196,802 more people (twelve times the number) than was required for a single-member district. As it developed in that case, there were insurmountable obstacles to the creation of single-member

districts within the time frame involved and the search continues for a solution.

In the case of East Carroll Parish the total population amounts to only 12,884. In 99% of the land area the population density averages only fifteen persons per square mile. There may be insurmountable difficulties to the creation of single-member districts for the election of police jurors and school board members. As to this, the present record presents no findings. The plan approved by the District Court after the perfection of this appeal had some multiple member wards.

We are unable to see how at-large elections in this small parish could possibly discriminate against its black citizens. They have a commanding majority of the total population. This majority would participate in the election of not one but of every police juror and every school board member in the parish. Every elected official would thus be answerable to all black citizens of the entire parish. On a single-member district plan, if such can be devised, the voters would have a voice in the election of only one member on the policy jury or the school board. It would, therefore, be just as easy to say, in the exercise of discretion, that a single district plan in this parish would more clearly dilute the voting power of the blacks than would one in which every voter, black and white, has the same identical voice in the selection of not one, *but all*, members of the elective body. As a matter of fact, the District Judge so found.

We are aware of no case in this Court or in the Supreme Court which has held that in the exercise of its jurisdiction to enforce the one man-one vote mandate of the Constitution a District Court *may not* direct that county officials be elected by all the voters of the county when there is no racially discriminatory purpose or effect.

It is true that in East Carroll 54% of the registered voters are white and 46% are black. This case is very much like *Howard v. Adams County Board of Supervisors,* 5 Cir., 1972, 453 F.2d 455, certiorari denied ____ U.S. ____, [40 L.W. 3598].

In Adams County 64% of the population lived in the City of Natchez. In a one man-one vote rearrangement of the five districts for the election of County Supervisors one district which formerly had a black population of 75% became a district with a white majority, and there were other radical changes as described in the opinion of the Court. The Court nowhere spoke of racial voting strength, *but of population.*

The Court[Judges Gewin, Goldberg, and Dyer] stated:

> "[W]e reject the plaintiffs' motion that they are constitutionally entitled to have old District Four divided into two predominately black electoral districts simply because they command a population concentration of sufficient size and contiguity to constitute two equally apportioned districts." 453 F.2d at 458.

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> "Inevitably, people of different races, national origins, and contrasting tenets will be shifted under reapportionment plans to districts in which they may no longer be in the clear majority. But when, as here, no racial motivation spawns a change of the voting area of those complaining, and the redistricting plan does not unconstitutionally dilute the voting strength of the complaining minority, there is no abridgement of voting rights." 453 F.2d at 459.

On May 22, 1972, the Supreme Court affirmed, Per Curiam, [40 L.W. 3553] the decision of the Three Judge District Court in *Ferrell v. Hall,* 339 F. Supp. 73 (W.D., Okla., 1972).

In that case, the lower court held that in complying with the one man-one vote rule the Oklahoma Legislature was not required to create a single senate district in an area in which Negro citizens constituted a clear majority, and no denial of equal protection resulted from inclusion of part of the Negro community in each of three senate districts. Oklahoma is not covered by the Voting Rights Act of 1965, as is Louisiana, but it is subject to the Fifteenth Amendment.

The District Court, affirmed by the Supreme Court, said:

> "One feature of the complaint filed by the plaintiffs is a plea for apportionment of State

> Senatorial Districts in Tulsa County according to race. Such a color conscious approach to apportionment is but another form of racial segregation and is constitutionally impermissible (citing cases)." 339 F. Supp. at 83.

The order of the District Court in this case dated March 27, 1972, is vacated because that Court was without jurisdiction to enter it.

The conditional motion of Stewart Marshall (filed March 28, 1972) to dismiss the original appeal in this case is denied.

The judgment of the District Court dated August 2, 1971, is affirmed.

Any citizen of East Carroll Parish is, of course, free to come forth at any time in a new case with a plan which would divide the parish into single-member districts of equal population for the election of police jurors and school board members, to be adjudged on its merits when presented.

In the meantime, this four year old case in a small rural parish, with a Negro population majority of almost 3 to 2, is terminated and in that parish every vote for county officials is left to its equal weight with that of every other vote cast, regardless of race or any other consideration.

AFFIRMED.

GEWIN, Circuit Judge, Concurring in part and Dissenting in part:

I fully concur with the majority's conclusion that § 5 of the Voting Rights Act of 1965 does not compel the submission of court ordered plans to the Attorney General and that the district court was without jurisdiction to modify its August 2, 1971, reapportionment decree after an appeal had been taken from that decree and before this court had disposed of that appeal. However, I am very doubtful that the majority accords proper emphasis to significant facts in this case or that the correct legal standard has been applied to the facts. I therefore dissent from the affirmance of the August 2, 1971, reapportionment decree.

At the outset I feel constrained to point out that it appears that the majority fails to give adequate consideration to the appellant's contentions. Marshall and the class he represents do emphasize their contention that the court was without power to order at-large elections because of the Attorney General's disapproval of the Louisiana statutes. But Marshall also asserts that the court was *clearly erroneous* in finding that at-large elections do not dilute the voting strength of black voters of that parish.[1] I believe that Marshall is correct in this assertion.

It seems to me the majority errs in focusing exclusively on the total population ratio of the Parish. The standard which the Supreme Court has articulated is whether "designedly or otherwise, a multi-member constituency apportionment scheme, under the cir-

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[1] Appellants brief on appeal pp. 5, 15-17.

cumstances of a particular case, would operate to minimize or cancel out the voting strength of racial or political elements of the voting population." *Burns v. Richardson,* 384 U.S. 73, 88, 16 L.Ed.2d 376, 388 (1966); *Fortson v. Dorsey,* 379 U.S. 433, 439, 13 L.Ed.2d 401, 405 (1965).[2] The majority opinion presumes that since the blacks in East Carroll Parish constitute a numerical majority (59%) it is therefore impossible as a matter of law for their voting strength to be diluted, minimized or cancelled. The blacks in the Parish presently constitute a minority of the registered voters (46%). During the ten year period from 1961 to 1971 the black voter registration in the Parish increased from zero to approximately 2,899 (including 2,122 Federally registered voters) while the white registration increased from approximately 2,845 to 3,342.[3]

Louisiana law has for many years required the members of the Parish Police Jury and School Board to be residents of the ward from which they are elected and to be elected by the voters of the ward. L.R.S.

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[2]The majority opinion relies on Howard v. Adams County Board of Supervisors, 453 F.2d 455 (5th Cir. 1972) to support its view that population, not voting strength, is determinative. That reliance appears inappropriate in view of Judge Dyer's discussion of the voting strength test, 453 F.2d at 457-58, and the approval of the district court's finding that the plaintiffs there had failed to show that the plan was a constitutionally impermissible dilution, minimization, or cancellation of the voting strength of the black citizens of Adams County, 453 F.2d at 458.

[3]These figures are based on the 1962 findings of the district court in the voter registration suit brought in the Parish, United States v. Manning, 205 F. Supp. 172 (W.D. La. 1962), and on the State of Louisiana Board of Registration, Report of Registered Voters, month ending October 6, 1971. *See* Appellant's Brief, p. 3; Appellee's Supplemental Brief, p.1.

§ 33:1221, *et seq.;* L.R.S. § 17:51.[4] Prior to the court-ordered change to at-large elections in 1968, black representatives were elected from the wards to two seats on the Police Jury and to one seat on the School Board.

It is apparent to me that the change to elections at-large makes it substantially more difficult for black voters to elect representatives than under the traditional ward system which Louisiana law requires. The at-large election dilutes any possible majority of black registered voters in one or more new and impartially drawn wards with the overall majority of white registered voters in the Parish. It was precisely this sort of dilution which caused the Attorney General to disapprove under § 5 of the Voting Rights Act of 1965, 42 U.S.C., § 1973c, the Louisiana statutes which sought to amend the Louisiana law to allow at-large elections for school boards and police juries.

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[4]Until 1968, Louisiana law prohibited at-large elections for School Boards and Police Juries (the law required at least five wards from which the members of these bodies were to be elected). By Louisiana Acts of 1968 No. 445 Section 1 (amending La. R.S. 33:1221) and No. 561 (adding La. R.S. 17:71.1 — 71.6), Louisiana Law was amended to allow at-large elections (or elections from less than five wards) for School Boards and Police Juries.

On April 29, 1969, Acts 445 and 561 were submitted to the Attorney General of the United States pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c. On June 26, 1969, both Acts were rejected as having "the effect of discrimination against Negro voters on account of their race, and of denying to them an effective voice in the selection of Police Jury and School Board members." On September 10, 1969 this rejection was reaffirmed by the Attorney General of the United States, citing as a specific example of racial discrimination, the at-large scheme of elections in East Carroll Parish.

However it is not necessary to decide whether in the circumstances of this case the dilution rises to the level of a denial of 14th or 15th Amendment rights. In this case we need only determine whether the district court abused its discretion in fashioning an equitable remedy. We are not faced with taking the constitutional measure of an apportionment policy adopted by the state or one of its sub-divisions as was the court in *Ferrell v. Hall*, ____ U.S. ____, 32 L.Ed.2d 328 (May 22, 1972); *Whitcomb v. Chavis*, 403 U.S. 124, 29 L.Ed.2d 353 (1971) and *Burns v. Richardson*, 384 U.S. 73, 16 L.Ed.2d 376 (1966).

In *Conner v. Johnson*, 402 U.S. 690, 29 L.Ed.2d 268 (1971) the Supreme Court noted:

> ". . . [W]hen district courts are forced to fashion apportionment plans, single-member districts are preferable to large multi-member districts as a general matter."

402 U.S. at 692, 29 L.Ed.2d at 271. See also, *Hall v. Issaquena County Board of Supervisors*, 453 F.2d 404 (5th Cir. 1971). No insurmountable difficulties of any kind have been demonstrated in this case. Both parties here presented the district court with a choice of various plans employing the traditional ward concept[5] which would have adequately solved the one-man one-vote problem without the dilution created by a wholly at-large scheme.

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[5]The Police Jury proposed an alternative plan for elections from districts in the event the district court found the at-large plan unconstitutional.

My view is not altered by this court's decision in *Howard v. Adams County Board of Supervisors*, 453 F.2d 455 (5th Cir. 1972). *Howard* approved the realignment of districts to comply with the one-man one-vote concept, not the adoption of an at-large election scheme. The white population constituted a numerical majority in Adams County and the black plaintiffs essentially sought to have the new districts drawn so as to assure two black majority districts. The Board of Supervisors adopted a reapportionment plan devised by an outside consulting firm, not the district court, which had been instructed to equalize the population in the districts and equalize the responsibilities of each supervisor. Finally, the plan in *Howard* had been submitted to the Attorney General for his approval and the Attorney General had indicated no objection.

While not controlling here, the disapproval of the Louisiana at-large election statutes by the Attorney General is strong evidence in support of Marshall's contention that the at-large scheme results in dilution of the black voting strength. Obviously the district court became dissatisfied with its own choice of a plan because the court sought to change its decree pending appeal to award the relief Marshall requested. I would vacate the district court's order of August 2, 1971 and remand the case for the entry of an appropriate apportionment decree.

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Appendix C

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 71-2649

CHARLES F. ZIMMER,

Plaintiff,

STEWART MARSHALL,

Intervenor-Appellant,

versus

JOHN J. McKEITHEN, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court for the Western District of Louisiana

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(September 12, 1973)

Before BROWN, Chief Judge, WISDOM, GEWIN, BELL, THORNBERRY, COLEMAN, GOLDBERG, AINSWORTH, GODBOLD, DYER, SIMPSON, MORGAN, CLARK, INGRAHAM and RONEY, Circuit Judges.

GEWIN, Circuit Judge: Aristotle has written:

If liberty and equality, as is thought by some, are chiefly to be founded in democracy, they

> will be best attained when all persons alike share in the government to the utmost.[1]

This case evokes a consideration of the extent to which the Constitution of the United States compels adherence to this principle. Specifically, we are called upon to determine under what circumstances an apportionment scheme operates to minimize or cancel out the voting strength of racial or political elements of the voting population.[2] Appellant contends that the district court order, affirmed by a majority of a panel of this court, requiring reapportionment for the school board and police juries in East Carroll Parish[3] under an at-large scheme of elections cannot pass muster under the aforementioned standard. Both the district court and a majority of a panel of this court held that an at-large scheme cannot work a dilution of black voting strength where blacks, though constituting a minority of registered voters, comprise a majority of the total population of the parish.[4] Upon rehearing en banc, this court finds the aforementioned conclusion

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[1] Aristotle, Politics, Book II.

[2] White v. Regester, ____ U.S. ____, ____, 37 L.Ed.2d 314, 324 (1973); Whitcomb v. Chavis, 403 U.S. 124, 143 (1971); Fortson v. Dorsey, 379 U.S. 433, 439 (1965); Burns v. Richardson, 384 U.S. 73, 88 (1966).

[3] In the absence of special legislative authority for school boards to apportion, the apportionment and reapportionment of parish school boards is dependent upon such apportionment of the police jury in the parish. Consequently, this case does not require a distinction between the reapportionment scheme as it affects either body.

[4] As shall be discussed *infra*, a majority of the panel refrained from announcing a per se rule. Rather, it qualified its application of the majority of population standards on the grounds proffered by appellees, namely the size of the parish.

infirm, and therefore we vacate and remand the district court's judgment.

I.

The panel opinion, recounting the facts which spawned this litigation and the protracted proceedings which it entailed, obviates the need for a full exposition of the present posture of this case. Consequently, we shall highlight only those facts particularly germane to our disposition.

East Carroll is a rural parish located in the extreme northeast corner of Louisiana. According to the 1970 census, it has a population of 12,884, of which 7,568, or 58.7% are black. Until recently, blacks in the parish, like all blacks in Louisiana, suffered from the maintenance of dual school systems, and the interposition of an interpretation test which preconditioned qualification for voting. Additionally, from 1922 to 1962, no black resident of the Parish had been permitted to register to vote. With the removal of state and locally imposed impediments to voting, and through the efforts of federal registrars, registration statistics in the parish changed dramatically. As of October 6, 1971, there were 3,342 whites and 777 blacks registered on the East Carroll rolls and an additional 2,122 federally registered black voters in the parish.[5] Concurrent

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[5] These figures are based on the 1962 findings of the district court in the voter registration suit brought in the Parish, United States v. Manning, 205 F. Supp. 172 (W.D. La. 1962), and on the State of Louisiana Board of Registration, Report of Registered Voters, month ending October 6, 1971. *See* Brief of Appellant at 3, Zimmer v. McKeithen, No. 71-2649 (5th Cir. filed Dec. 1, 1971); Brief of Appellee at 1, *id.* (5th Cir. filed March 28, 1972).

with the increased registration of black voters, elections under the predecessor ward system produced two black members of the police jury and one black school board member.

The change from ward to at-large elections challenged herein was produced by the entry in 1968 of a district court order in a suit where petitioners sought to insure fidelity to the one-man, one-vote principle of *Reynolds v. Sims*, 377 U.S. 533 (1964). Three years elapsed between the entry of this order and the renewal of proceedings precipitated by instructions issued by the district court that East Carroll submit a reapportionment plan in light of the 1970 census. Pursuant to these instructions, the Parish Police Jury resubmitted the 1968 at-large plan for approval. Subsequently, appellant Marshall was permitted to intervene on behalf of himself and all other similarly situated black voters in East Carroll, and challenge the propriety of the at-large plan as contravening the fourteenth and fifteenth amendments of the Constitution and Section 5 of the Voting Rights Act of 1965.[6] After the hearing conducted on July 29, 1971, the district court found, *inter alia*, that since under the at-large plan, there was a zero population deviation, the at-large plan did not dilute the voting strength of the black population. Accordingly, the district court ordered that police jury and school board elections be conducted pursuant to an at-large scheme of voting under which the parish was divided into 7 wards. Under this scheme, 6 of the wards were to elect 1 representative to the police jury and school

[6]Although Marshall clearly raised the Voting Rights Act issue in his Complaint in Intervention, the district court in its order in 1971 did not rule on this issue. Since he preserved this contention on appeal, it was before a panel of this court.

board, and 1 ward was to elect 3 representatives. Although candidates were required to reside in the ward from which they sought election, they were to be voted upon by registered voters in the entire county.

Marshall urged several grounds for reversal on appeal: first, that the district court was without power to order at-large elections because under Section 5 of the Voting Rights Act of 1965, the Attorney General of the United States had tendered an objection to the Louisiana Statutes which prescribed at-large elections for police juries and school boards;[7] second, that the district court applied an improper legal standard in evaluating dilution; and third, that the district court was clearly erroneous in finding that at-large elections do not dilute the voting strength of black voters in the parish. All three contentions were rejected by the panel.[8]

[7]Until 1968, Louisiana law prohibited at-large elections for School Boards and Police Juries (the law required at least five wards from which the members of these bodies were to be elected). By Louisiana Acts of 1968 No. 445 Section 1 (amending La. R.S. 33:1221) and No. 561 (adding La. R.S. 17:71.1 — 71.6), Louisiana Law was amended to allow at-large elections (or elections from less than five wards) for School Boards and Police Juries.

On April 29, 1969, Acts 445 and 561 were submitted to the Attorney General of the United States pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c. On June 26, 1969, both Acts were rejected as having "the effect of discrimination against Negro voters on account of their race, and of denying to them an effective voice in the selection of Police Jury and School Board members." On September 10, 1969 this rejection was reaffirmed by the Attorney General of the United States, citing as a specific example of racial discrimination, the at-large scheme of elections in East Carroll Parish.

[8]In all deference to the panel, we submit that they failed to give adequate consideration to Marshall's contention that the district court's finding of no dilution was clearly erroneous.

On rehearing, Marshall challenged the panel's disposition on all three grounds. Since we find his last two challenges meritorious, we need not consider his first contention concerning Section 5 of the Voting Rights Act of 1965.[9]

II.

Before proceeding further, we feel it is important to emphasize the posture in which the issues are presented in the instant case. The panel understood Marshall to contend that the district court abused its discretion in adopting a plan that did not comport with *Connor v. Johnson*, 402 U.S. 690 (1971). We do not understand Marshall to make this contention. Consequently, we need not consider whether, absent an allegation that an at-large scheme unconstitutionally dilutes the voting strength of a minority, the district court's approval of an at-large scheme would amount to an abuse of discretion under *Connor*.

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[9]Marshall contended that the rule of Connor v. Johnson, 402 U.S. 690 (1971) and Sheffield v. Itawamba County Board of Supervisors, 439 F.2d 35 (5th Cir. 1971) that court ordered plans resulting from equitable jurisdiction over adversary proceedings are not controlled by Section 5 is inapposite where such plans are adopted by a court in "sweetheart" lawsuits. Although there may be merit in his contention that the failure to qualify *Connor* and *Sheffield* may result in the circumvention of the Voting Rights Act, we would merely note that the dilution standard is a viable means of reconciling the disparate treatment of governmental body approved plans and court approved plans under Section 5. Furthermore, since Section 5, 42 U.S.C. § 1973c (1970), covers attempts to administer voting practices as well as attempts to enact them, *see* Roman, Section 5 Of The Voting Rights Act: The Formation of an Extraordinary Legal Remedy, 22 Am. U. L. Rev. 111, 124 (1972), the panel's decision that *Connor* and *Sheffield* govern is quite appropriate.

Marshall's contention here is that the judicially approved at-large plan is unconstitutional,[10] not merely indiscrete. Having identified Marshall's contention, we turn to a consideration of first, the proper standard for testing dilution, and second, whether the district court erred in finding that there was no dilution in the instant case.

We begin by noting that the concept of population in fair representation cases is not possessed of any talismanic quality. The Supreme Court recently affirmed this proposition in *Gaffney v. Cummings*, where it stated that "if it is the weight of a person's vote that matters, total population — even if stable and accurately taken — may not actually reflect that body of voters whose votes must be counted and weighed for purposes of reapportionment, because 'census persons' are not voters."[11] Indeed, *Reynolds v. Sims*, *supra* and its progeny[12] marked a departure from statistical

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[10]A similar contention was made in Gunderson v. Adams, 328 F. Supp. 584 (S.D. Fla. 1970) *aff'd* 402 U.S. 913 (1971) where a Florida plan, codifying a court ordered plan, was challenged and upheld.

[11]Gaffney v. Cummings, ____ U.S. ____, 37 L.Ed.2d 298, 308 (1973). Thus, census figures include aliens, nonresident military personnel, nonresident students, all of whom may be ineligible to vote. The Supreme Court and lower courts have approved apportionment based not on population but on voter registration statistics on several occasions, where such data produces a distribution of legislators not differing substantially from the use of a permissible population basis. *See, e.g.*, Burns v. Richardson, *supra* at 93, Ely v. Klahr, 403 U.S. 108 (1971); Reynolds v. Gallion Ex Rel. Attorney General of Alabama, 308 F. Supp. 803 (M.D. Ala. 1969); Pate v. El Paso County, Texas, 337 F. Supp. 95 (W.D. Tex) *aff'd*, 400 U.S. 806 (1970).

[12]*E.g.*, Gaffney v. Cummings, *supra*; White v. Regester, *supra*; Mahan v. Howell, 410 U.S. 315 (1973); Abate v. Mundt, 403 U.S. 182 (1971); Swann v. Adams, 385 U.S. 440 (1967).

niceties. Consequently, to rely upon population statistics, to the exclusion of all other factors, is to give these statistics greater sanctity than that which the law permits or requires.

More fundamentally, the application of the population measure to this case is premised upon a misunderstanding of the thrust of the dilution problem presented in this case. Inherent in the concept of fair representation are two propositions: first, that in apportionment schemes, one man's vote should equal another man's vote as nearly as practicable;[13] and second, that assuming substantial equality, the scheme must not operate to minimize or cancel out the voting strength of racial elements of the voting population. Both the Supreme Court and this court have long differentiated between these two propositions.[14] And although population is the proper measure of equality in apportionment, in *Whitcomb v. Chavis*, 403 U.S. 124, 149-150 (1971) and *White v. Regester, supra* at 324, the Supreme Court announced that access to the political process and not population was the barometer of dilution of minority voting strength.

The district court applied a per se rule that since blacks were a majority in East Carroll Parish, the

[13]Reynolds v. Sims, *supra* at 324.

[14]*See* Gaffney v. Cummings, *supra* at 311; White v. Regester, *supra* at 324; Whitcomb v. Chavis, *supra* at 142; Abate v. Mundt, *supra* at 184 n.2; Burns v. Richardson, *supra* at 88-89; Howard v. Adams County Board of Supervisors, 453 F.2d 455, 457 (5th Cir. 1972) *cert. denied*, 32 L.Ed.2d 812 (1972). *See also* Troxler v. St. John the Baptist Parish Police Jury, 331 F. Supp. 222 (E.D. La. 1971), *appeal dismissed*, 452 F.2d 1388 (5th Cir. 1972).

at-large plan could not possibly submerge their vote. Since in *White v. Regester, supra*, the Supreme Court affirmed a district court's finding of dilution in Bexar County even though Mexican-Americans comprised a numerical majority of the population in that county, the per se rule applied by the district court below cannot withstand scrutiny. The panel also relied upon the fact that blacks in East Carroll comprised a majority of population in reaching its conclusion, but pointing to the size of the parish's population, it qualified the standard applied by the district court. We feel that this qualification, invoked to differentiate the instant case from *Connor v. Johnson*, 402 U.S. 690, 692 (1971) where the Supreme Court announced a preference for single-member districts in "large" districts, is of no moment where, as here, a showing of dilution has been made. The legal standards announced by the Supreme Court in *Whitcomb v. Chavis, supra*, and *White v. Regester, supra* in determining submergence admit of no distinction on the basis of size of population alone.

Concededly, in *Whitcomb v. Chavis, supra* at 143-44, the Supreme Court acknowledged that the aggregation of several districts into multi-member districts or an at-large scheme may enhance the potential for dilution when the population of such districts is large. But just as the magnitude of the districts did not obviate the need for petitioners to satisfy their burden of proof in *Whitcomb*, the minuteness of the population in the instant case cannot be invoked to pretermit further inquiry into the possibility of dilution in East Carroll Parish. The import attributed to population by the majority of the panel had this preclusive effect. However, we cannot sanction the view that minorities are to be

exposed and subject to apportionment schemes otherwise constitutionally infirm because the equal protection clause can be watered down on the basis of population statistics alone.[15]

We also hold that the district court erred in finding that the at-large plan did not dilute the black vote in East Carroll. In *Howard v. Adams County Board of Supervisors, supra* at 458, this court stated that to establish the existence of a constitutionally impermissible redistricting plan, plaintiffs must maintain the burden of showing either first, a racially motivated gerrymander, or a plan drawn along racial lines, or second, that ". . . designedly or otherwise, a[n] . . . apportionment scheme, under the circumstances of a particular case, would operate to minimize or cancel out the voting strength of racial or political elements of the voting population." In view of our holding that Marshall satisfied the burden with respect to the second standard, we need not entertain his contention that the departure from the firmly entrenched state policy against at-large voting in elections in police juries and school boards comes within the first standard.[16]

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[15]We acknowledge, however, that elections with respect to certain special governmental units of limited purpose are not subject to the fair representation mandates. *See* Associated Enterprises, Inc. v. Toltec Watershed Improvement District, ____ U.S. ____, 35 L.Ed.2d 675 (1973); Salyer Land Company v. Tulare Lake Basin Water Storage District, ____ U.S. ____, 35 L.Ed. 2d 659 (1973).

[16]Similar contentions have met with varying degrees of success. For cases upholding the claim that a reapportionment plan was racially discriminatory, *see* Gomillion v. Lightfoot, 364 U.S. 339 (1960); Smith v. Paris, 257 F. Supp. 901, 904 (M.D. Ala.) *modified and aff'd*, 386 F.2d 979 (5th Cir. 1967) *on remand* United States v. Democratic Executive Committee of Barbour County, Alabama, 288 F. Supp. 943 (M.D. Ala. 1968); Sims v. Baggett, 247 F. Supp. 96, 110 (M.D. Ala. 1965). For cases in which such a claim was rejected, *see* Wright v. Rockefeller, 376 U.S. 52 (1964); Holt v. Richmond, 459 F.2d 1093 (4th Cir.)., *cert. denied*, ____ U.S. ____, 33 L.Ed.2d 343 (1972).

Neither the language quoted from Howard v. Adams County Board of Supervisors, *supra*, nor the aforementioned cases should be read to hold that a reapportionment plan can be invalidated solely because of the racial motivations of those who fashioned it. In Palmer v. Thompson, 403 U.S. 217, 224-25 (1971), the Supreme Court stated that although its past decisions contain language which suggests that motive or purpose behind a law is relevant to its constitutionality, these decisions, including Gomillion v. Lightfoot, 364 U.S. 339, 347 (1960) focused on the actual effect of the legislation being challenged, and not the reason why the legislation was enacted.

It is axiomatic that at-large and multi-member districting schemes are not per se unconstitutional.[17] Nevertheless, where the petitioner can demonstrate that "its members had less opportunity than did other residents in the district to participate in the political processes and to elect legislators of their choice," *White v. Regester, supra* at 324, *Whitcomb v. Chavis, supra* at 149-50, such districting schemes are constitutionally infirm.

The Supreme Court has identified a panoply of factors, any number of which may contribute to the existence of dilution. Clearly, it is not enough to prove a

[17]White v. Regester, *supra* at 324; Mahan v. Howell, *supra* at 335; Ferrell v. Hall, 339 F. Supp. 73 (W.D. Okla.) *aff'd* 406 U.S. 939, *petition for rehearing denied*, 35 L.Ed.2d 344 (1972); Gunderson v. Adams, 328 F. Supp. 584 (S.D. Fla. 1970); *aff'd* 403 U.S. 913 (1971); Dusch v. Davis, 387 U.S. 112 (1967); Kilgarin v. Hill, 386 U.S. 120, 121 (1967); Burns v. Richardson, *supra;* Fortson v. Dorsey, *supra;* Lipscomb v. Johnson, 459 F.2d 335, 337 (5th Cir. 1972); Howard v. Adams County Board of Supervisors, *supra* at 457-58.

mere disparity between the number of minority residents and the number of minority representatives.[18] Where it is apparent that a minority is afforded the opportunity to participate in the slating of candidates to represent its area, that the representatives slated and elected provide representation responsive to minority's needs, and that the use of a multi-member districting scheme is rooted in a strong state policy divorced from the maintenance of racial discrimination, *Whitcomb v. Chavis, supra,* would require a holding of no dilution. *Whitcomb* would not be controlling, however, where the state policy favoring multi-member or at-large districting schemes is rooted in racial discrimination.[19] Conversely, where a minority can demonstrate a lack of access to the process of slating candidates,[20] the unresponsiveness of legislators to their particularized interests, a tenuous state policy underlying the preference for multi-member or at-large districting, or that the existence of past discrimination in general precludes the effective participation in the election system, a strong case is made. Such proof is enhanced by a showing of the existence of large districts, majority vote requirements, anti-single shot voting provisions and the lack of provision

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[18] *E.g.*, Whitcomb v. Chavis, *supra* at 149; Lipscomb v. Jonsson, *supra* at 337.

[19] Taylor v. McKeithen, *supra* at 650, n. 3. *See* Parker, County Redistricting in Mississippi: Case Studies in Racial Gerrymandering, 44 Miss. L. J. 391, 400 (1973).

[20] The Supreme Court's focus in Whitcomb v. Chavis, *supra* at 149-50, on the access of minorities to slating procedures in Marion County, Indiana, makes clear that the standards we enunciate today are applicable whether it is a specific law or a custom or practice which causes the diminution of minority voting strength.

for at-large candidates running from particular geographical subdistricts.[21] The fact of dilution is established upon proof of the existence of an aggregate of these factors. The Supreme Court's recent pronouncement in *White v. Regester, supra,* demonstrates, however, that all these factors need not be proved in order to obtain relief.

In *White*, the Supreme Court sustained the district court's invalidation of a multi-member districting scheme for the election of representatives to the Texas House of Representatives from Dallas and Bexar Counties. The Court held that the following findings of fact made by the district court concerning Dallas County were sufficient to warrant the relief fashioned: first, that the blacks had suffered a history of official racial discrimination which touched their right to participate in democratic processes; second, that the Texas requirements for majority vote as a prerequisite to nomination in a primary, though not themselves improper, enhanced the opportunity for racial discrimination; and third, that black candidates had merely nominal success in the past in electing Representatives due to the indifference of the Democratic Party which controlled candidate-slating in Dallas County. *White v. Regester, supra* at 324-25. With respect to Bexar County, the district court made similar findings concerning the history of discrimination

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[21] *Compare* Whitcomb v. Chavis, supra at 143-44, *with* Graves v. Barnes, 343 F. Supp. 704, 725 (W.D. Tex. 1972) *aff'd sub. nom.* White v. Regester, *supra*. The existence and mode of operation of voting procedures which enhance dilution is outlined in Derfner, Racial Discrimination and the Right to Vote, 26 Vand. L. Rev. 523, 553-55 and accompanying notes (1973).

against Mexican-Americans and the unresponsiveness of the Bexar County legislative delegation to the interests of Mexican-Americans. The Supreme Court held that the district court's findings were sufficient to sustain the relief awarded in Bexar County. *White v. Regester, supra* at 325-26. While the instant case is not on all fours with *White v. Regester,* we hold that the record reveals facts sufficiently within its purview to warrant a repudiation of at-large elections in East Carroll Parish.

As in Dallas and Bexar Counties, minority residents in East Carroll Parish have suffered from a protracted history of racial discrimination which touched their ability to participate in the electoral process. Until 1957, they were compelled by a statute of statewide application to attend racially segregated schools until this court took action in *Orleans Parish School Board v. Bush,* 242 F.2d 156 (5th Cir.), *cert. denied,* 354 U.S. 921 (1957). Less overt but equally invalid statewide schemes which fostered the maintenance of dual schools were operative until thwarted in 1960.[22] Until 1965, voters in East Carroll were subject to a state-required interpretation test in order to qualify to vote.[23] Finally, from 1922 to 1962, no black had been permitted to register to vote in the Parish.[24] Concededly, these impediments to participation in the electoral process have since been removed. The district

[22] *See, e.g.,* Bush v. Orleans Parish School Board, 188 F. Supp. 916, 920 (E.D. La. 1960) (documenting additional circumventive artifices).

[23] Louisiana v. United States, 380 U.S. 145 (1965).

[24] United States v. Manning, *supra.*

court concluded that their removal vitiated the significance of the showing of past discrimination. This conclusion is untenable, however, precisely because the debilitating effects of these impediments do persist. *Cf. Graves v. Barnes,* 343 F. Supp. 704, 733 (W.D. Texas 1972), *aff'd sub. nom., White v. Regester, supra.* Their persistence is manifested, in part, by the fact that although blacks in East Carroll comprise a majority of the population, they constitute a minority of registered voters.

Similarly, as in Dallas and Bexar Counties, the electoral device of a majority voting requirement is operative in East Carroll Parish.[25] This device has been severely criticized as tending to submerge a political or racial minority. *Graves v. Barnes, supra* at 725, *aff'd sub. nom., White v. Regester, supra. See also Evers v. State Board of Election Comm'rs.,* 327 F. Supp. 640, 643 (S.D. Miss. 1971). This criticism is appropriate in the instant case.

The only distinction between the instant case and *White v. Regester, supra,* is that here, there is no proof that representatives of police juries and school boards in East Carroll were particularly insensitive to the interests of minority residents. While this distinction is

[25] La. Rev. Stat. Ann. art. 18, § 18:358 (1969). In addition, voters in East Carroll are subject to anti-single shot voting requirements, the effects of which though mitigated as to wards 1, 2, 4, 5, 6 and 7 under the district court's plan, are still egregious in ward 3 where 3 representatives to the police jury and school board are elected. *See* La. Rev. Stat. Ann. art. 18, § 18:351 (1969).

significant, it is not decisive.[26] We feel that this deficiency in proof is compensated for by an additional distinction between the circumstances in the instant case and *White*. In Dallas and Bexar Counties, there was a strong tradition of multi-member districting. In contrast, in East Carroll, the firmly entrenched state policy against at-large elections for police juries and school boards had persisted until as late as 1967. Moreover, although testimony elicited by the district court emphasized the fact that the problems confronting the police jury were parish-wide and hence could best be resolved by representatives sensitive to a parish-wide electorate, there is a dearth of evidence that would suggest that the police jury formerly elected by wards inadequately served parish-wide interests in the past. Indeed, we find it rather anomalous that appellees would contend that the parish is too small for there to be a dilution of minority votes under an at-large scheme, and yet too large for ward elected representatives to be responsive to parish-wide interests.

Thus, on the basis of the evidence adduced on the record, we feel constrained to find that the district

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[26] It may be that the absence on the record of any criticism of the responsiveness of the police jury and school board is attributable to an omission of proof. If so, our decision should not be interpreted as acquiescing to such omissions. However, it may be that the particular functions of the police jury, for example, do not easily lend themselves to unresponsive representation. The record establishes that the primary function of the juries is the drainage of rural farmlands, maintenance of rural roads, and the overseeing of a prison farm. Were we to hold that the absence of a claim of representation unresponsive to a minority's needs foreclosed constitutional attack, the voting strength of minorities could be freely diluted without fear of constitutional restraint. The absence of proof with respect to school boards could not be explained on such grounds.

court erred in rejecting Marshall's contention that the at-large electoral scheme would work a diminution of the black voting strength in East Carroll Parish. The confluence of factors presented in the instant case bring it well within the Supreme Court's holding in *White v. Regester, supra.*

Although the aforementioned analysis suffices to sustain our disposition, we are inclined to respond to an additional argument tendered by appellee in support of the panel's ruling. While acknowledging that the instant facts might theoretically present a case of dilution, appellee argued that 1971 and 1972 elections under the at-large plan, with the attendant success of 3 black candidates, dictated a finding that the at-large scheme did not in fact dilute the black vote. The significance attached to success at the polls in the instant case is unavailing, however, for two reasons. First, these results were not before the district court when it rendered the opinion we are presently reviewing. It is axiomatic that an appellate court cannot take cognizance of matters not passed upon by the trial court. Second, we cannot endorse the view that the success of black candidates at the polls necessarily forecloses the possibility of dilution of the black vote. Such success might, on occasion, be attributable to the work of politicians, who, apprehending that the support of a black candidate would be politically expedient, campaign to insure his election. Or such success might be attributable to political support motivated by different considerations — namely that election of a black candidate will thwart successful challenges to electoral schemes on dilution grounds.

In either situation, a candidate could be elected despite the relative political backwardness of black residents in the electoral district. Were we to hold that a minority candidate's success at the polls is conclusive proof of a minority group's access to the political process, we would merely be inviting attempts to circumvent the Constitution. This we choose not to do. Instead, we shall continue to require an independent consideration of the record.

III.

We conclude our analysis in this case by returning to the point at which we began when we noted that this is not a case wherein a district court reapportionment plan approving at-large elections is challenged merely as an abuse of discretion. Where such a challenge is registered, our starting point would be *Connor v. Johnson, supra,* in which the Supreme Court announced that single-member districts are preferable to large multi-member districts. This preference is not, however, an unyielding one. As the Supreme Court admonished in *Whitcomb v. Chavis, supra* at 161, "[t]he remedial powers of an equity court must be adequate to the task, but they are not unlimited." Lest our decision today be misconstrued to narrowly circumscribe the discretion of a district court in fashioning a reapportionment plan itself free from constitutional infirmity, we would note that the preference for single-member districts may yield in two situations.

Where a district court determines that significant interests would be advanced by the use of multi-member districts and the use of single-member districts would jeopardize constitutional requirements, it can employ multi-member districts. *See Mahan v. Howell, supra* at 334-35. But these significant interests must not themselves be rooted in racial discrimination. *Cf. Taylor v. McKeithen, supra* at 650 n. 3; *White v. Weiser,* ____ U.S. ____, ____, 37 L.Ed.2d 335, 347 (1973).

The preference may also yield where a district court determines that multi-member districts afford minorities a greater opportunity for participation in the political processes than do single-member districts. In the process of making such a determination, a court need not be oblivious to the existence and location of minority voting strength.[27] While not required to for-

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[27]The Supreme Court has never ruled on the question of the extent to which the board equitable powers of a federal court in fashioning reapportionment decrees are limited by the colorblind concept of Gomillion v. Lightfoot, *supra* and Wright v. Rockefeller, *supra*. *See* Taylor v. McKeithen, *supra* at 650. Several courts have intimated that the colorblind concept is in fact a limitation. *See* Mann v. Davis, 245 F. Supp. 241, 245 (E.D. Va.) *aff'd sub. nom.* Burnette v. Davis, 382 U.S. 42 (1965); Ferrell v. Hall, 339 F. Supp. 73, 83 (W.D. Okla.) *aff'd*, 406 U.S. 939, *rehearing denied* ____ U.S. ____, 33 L.Ed.2d 344 (1972).

In discussing the remedial power of federal courts to fashion reapportionment decrees, the Court has cited *Swann v. Charlotte-Mecklenburg Bd. of Ed.*, 402 U.S. 1 (1971), *see, e.g.,* Taylor v. McKeithen, *supra* at 650; Sixty-Seventh Minnesota State Senate v. Beens, *supra* at 12 (Stewart, J., dissenting), thereby suggesting that such powers in fashioning reapportionment decrees are coterminous with those in fashioning desegregation decrees. Since *Swann* noted that it was permissible for a federal court to consider race in the latter situation, *Swann, supra* at 25, it would also be permissible to consider race in the former situation.

Our decision in Howard v. Adams County Board of Supervisors, *supra* is not inconsistent with the view maintained

mulate a plan that assures the success of a minority at the polls, a court may in its discretion opt for a multi-member plan which enhances the opportunity for participation in the political processes.

We acknowledge that the legal standards fashioned in this area of the law require federal courts to engage in a particularly exacting and hazardous inquiry in order to divine the proper remedial action to be taken. Justice Stewart presaged what we today acknowledge in his dissent in *Sixty-Seventh Minnesota State Senate v. Burns*, 406 U.S. 187, 32 L.Ed.2d 1, 14 (1972), when he noted that "the federal courts are often going to be faced with hard remedial problems" in reapportionment cases. Nevertheless, we are confident that federal courts can come to grips with such problems.

For the reasons set forth above, we REVERSE the decision of the panel of this court and VACATE and REMAND the judgment of the district court for proceedings consistent with our disposition.

COLEMAN, Circuit Judge, with whom INGRAHAM, Circuit Judge, joins, dissenting in part: On November 17, 1972, a majority of the Judges ordered this case reheard en banc, directing counsel to file through briefs on the issue of "dilution of the franchise of black voters" as raised in the District Court and considered

herein. In Howard, we observed that the district court was correct in noting that the organization commissioned by the legislature to draw up reapportionment plans did not consider race in its plan. Howard, *supra* at 458. We did not intimate any view as to the propriety of considering race in such circumstances.

by the panel decision.[1] Clearly, what the en banc court intended to do was to establish some standards as to what is required to "minimize or cancel out black voting strength",[2] particularly in the context of a sparsely settled governmental unit inhabited by less than 13,000 people.

With sincere deference, I fear that the intended objective has eluded the en banc opinion. Regretfully, it leaves me with no plainly discernible idea of what the District Courts are hereafter to do with this troublesome problem. Moreover, I must disagree with the effect of those portions of the opinion which I think I do understand.

The opinion appears to be anchored, in the main, on the recent decision of the Supreme Court in *White v. Regester*, dealing with conditions prevailing as to the multi-member legislative districts in Dallas and San Antonio. East Carroll Parish, Louisiana, however, is a "far cry" from either of these highly populated metropolitan areas. The Parish Seat, Lake Providence, has a population of 6,183. The remaining 450 square miles of typical rural delta terrain have 6,701 inhabitants, with an average population density of fifteen persons (not voters) per square mile. In East Carroll blacks are in a heavily preponderant majority, not in the minority as were the blacks and Mexican-Americans in Dallas and San Antonio. In *White*, the Supreme Court considering the *totality of the circumstances*,

[1]The panel opinion in this case (Judge Gewin dissenting in part) is reported, 467 F.2d 1381.

[2]Burns v. Richardson, 384 U. S. 73; Fortson v. Dorsey, 379 U. S. 433.

was not inclined to disturb the findings of the Three Judge District Court that certain conditions in the cities had led to invidious discrimination against the minority groups. In the instant appeal, the en banc majority holds a non-cancellation, non-minimization finding of the District Court to be clearly erroneous.

Let us now turn to the undisputed facts in the case presently before us.

In round figures, the Parish population is 59% black and 41% white; the voting registration is 54% white and 46% black. *The record fails to reflect the number of eligible blacks who have chosen not to register.*

With a spread of only eight percentage points between white and black registration, even in an election conducted solely on racial considerations a switch of less than five percent would reverse the expected outcome. Does such a *thin line*, even in a formerly segregated jurisdiction, amount as a matter of law to impermissible "minimization" or "cancellation" of black voting strength? I would respond in the negative, but the en banc opinion says "yes"; that any other view is clearly erroneous. Of course, divergencies of such size in constitutionally mandated population reapportionments at state and local levels do not call for per se invalidation, *White v. Regester, supra.*

One of the factors stressed in *White v. Regester* was that for nearly a hundred years only two minority representatives from Dallas County and only five Mexican-Americans from Bexar County had been elected

to the Texas Legislature. I do not know how many had been candidates nor what qualifications they possessed, but in East Carroll the en banc opinion declines to consider the unchallenged fact that in the at-large elections in East Carroll Parish in 1971 and 1972 three black candidates were elected to office, including one who previously had been defeated when running in his own ward. The opinion holds that an appellate court cannot take cognizance of matters not passed upon by the trial court. It was all right for the Supreme Court to consider election results in Dallas and Bexar for the past one hundred years but when it comes to dismembering a little parish we must blind ourselves to facts asserted on oral argument and not in the least disputed. One rule for plaintiffs and the opposite for defendants. I might add that in the eight years I have served on this Court I have frequently seen it go outside the formal record in racially oriented cases for the reason that it would not blind itself to unchallenged facts.

Obviously, the election of three black candidates in at-large elections within two years after the adoption of the plan now under review, and at a time when black registration amounted to 46% and white registration came to 54%, pretty well explodes any notion that black voting strength has been cancelled or minimized. What the en banc opinion condemns as clearly erroneous turns out to be clearly right when put to the test of actual use at the ballot box rather than in the rarified atmosphere of the judicial chamber.

Additionally, in *White v. Regester*, the at-large candidates for the legislature were not required to live in a particular zone, so that it was possible for every legislator to be elected from outside the minority areas. Indeed, the Three Judge Texas District Court felt impelled to say, and the Supreme Court quoted it, that these legislators were "insufficiently responsive to Mexican-American interests".

In East Carroll Parish, however, the candidates were required to run from specifically designated areas.

I believe that *White v. Regester* was decided on the denial of access to the political process, not on cancellation or minimization of the minority vote. In any event, a decision rendered on the facts peculiar to that case and not shown to exist in East Carroll provides faint precedential support for the en banc decision now about to be rendered.

In East Carroll Parish the black people hold a predominant population majority — 59% to 41%. It necessarily follows that the opinion of the Court in this case can only mean that in formerly "segregated" areas a black population majority is of no consequence in one man-one vote reapportionment cases unless it is also matched by a black registration majority when there is an effort to escape from the pocket borough method of electing county officials. The basic requirement, the fundamental goal, of population equality must yield to registration equality.

I submit that this is a serious distortion of the one man-one vote principle. It has to be premised on the idea that voters will always vote for candidates of their own race, an idea which has repeatedly failed the test of electoral experience, even in East Carroll Parish itself. It also overlooks the absolute certainty that with such a predominantly heavy population majority it is only a matter of time, and not too long at that, when there will be a black registration majority in East Carroll.

The en banc opinion is quite inconclusive as to what the District Court must do on remand. Apparently, however, no choice is left but to direct the division of the Parish into wards (districts). The Balkan must be fragmented into nine Balkans. After it had lost jurisdiction in this case, as set forth in the panel opinion, the District Court approved a redistricting plan submitted by the plaintiff-appellants by which three of the nine board members would be elected from one ward while the other six wards would be allowed to elect only one each. One ward would elect 1/3 of the Board while the other six would elect 1/9 each. So far as ultimate power on the Board is concerned a vote in one ward would be worth exactly three times that of a vote in any other ward. To me that certainly smells of invidious discrimination and a complete distortion of the one man-one vote rule within a small county area.

The paramount consideration in this case is that in East Carroll Parish, Louisiana, the black race is a

definite majority, not a minority.[3] Thus, the ultimate question is whether a 7% deficit in black registration cancels or minimizes the black voting strength of those who hold an 18% advantage in population. The en banc opinion says that it does, as a matter of law, and that the affirmative finding of the District Court to the contrary is clearly erroneous.

Hence, we direct a change in the election machinery of a small rural parish, where the black officials elected under the old malapportioned ward plan expressed, as the record shows, a preference for the at-large plan.

I would adhere to what the panel said originally:

> "We are unable to see how at-large elections in this small parish could possibly discriminate against its black citizens. They have a commanding majority of the total population. This majority would participate in the election of not one but of every police juror and every school board member in the parish. Every elected official would thus be answerable to all black citizens of the entire parish. On a single-member district plan, if such can be devised, the voters would have a voice in the election of only one member on the police jury or the school board. It would, therefore, be just as easy to say, in the exercise of discretion, that a single district plan in this parish would more clearly dilute the voting power of the blacks than would one in which every voter, black and white, has the same identical voice in the selection of not one, *but all* members of the elective body. As a matter of fact, the District Judge so found."

[3]The en banc opinion speaks of single-shot voting, run-off elections, and slating candidates, but these were not issues in the court below.

To the extent indicated, I respectfully dissent.

CLARK, Circuit Judge, with whom DYER, MORGAN and RONEY, Circuit Judges, join, dissenting: The majority bases its reversal of the District Court order now on appeal on two grounds: first, the District Court improperly relied on population statistics alone in evaluating the effect of the plan ordered implemented in diluting the voting strength of black citizens and second, the District Court finding of no dilution was clearly erroneous. With deference, I differ as to both grounds. Of more fundamental importance is my disagreement with Part III of the majority opinion which creates a formula to test multimember district reapportionment plans for dilution of ethnic group voting strength. The tests laid down sweep too broadly and at least they are unnecessary in view of the clear exposition of the law in this field by the Supreme Court. For all of these reasons I respectfully dissent.

I.

White v. Regester announces the legal standard to be applied in this case as succinctly and cogently as

it can be put. Omitting supportive citations, the Court stated:

> Plainly, under our cases, multimember districts are not *per se* unconstitutional, nor are they necessarily unconstitutional when used in combination with single-member districts in other parts of the State.
>
> But we have entertained claims that multimember districts are being used invidiously to cancel out or minimize the voting strength of racial groups.
>
> To sustain such claims, it is not enough that the racial group allegedly discriminated against has not had legislative seats in proportion to its voting potential. The plaintiffs' burden is to produce evidence to support findings that the political processes leading to nomination and election were not equally open to participation by the group in question — that its members had less opportunity than did other residents in the district to participate in the political processes and to elect legislators of their choice.

The Supreme Court concluded that "on the totality of the circumstances" it would not overturn the findings of the District Court

> representing as they do a blend of history and an intensely local appraisal of the design and

> impact of the Bexar County multi-member district in the light of the past and present reality, political and otherwise.

The majority epitomizes the District Court's order as one which based its determination of nondilution solely on the fact that the requirement of at-large elections eliminated any population deviation between voting units. However, I read the order to have a broader foundation. At the hearing held to determine the effect of the 1970 census upon the District Court's previous 1968 order for at-large elections, six plans were submitted to the court by the governmental agencies involved and by the black intervenor. None of these plans provided for single-member districts throughout the parish. Rather, they provided for various combinations of single and multimember districts and for various forms of parish-at-large elections with geographical residency requirements for the candidates for various posts. The evidence adduced during this hearing delved into what dilution would be brought about by the intervenor's proposed plans as compared with the dilution that would result from a parish-at-large reapportionment plan. Both forms of plans were also compared to the population proportions which existed under the pre-1968 single-member ward system.

The District Court's decree now on appeal provided in pertinent part:

> . . . the court having considered all plans presented as well as all alternate plans proposed

by the parties hereto, it has made the following finding of facts:

1. That according to the 1970 U.S. Census, East Carroll Parish has a total population of 12,884 persons of which number 7,568 are blacks and 5,306 are whites and other nationalities; that the black population of East Carroll Parish, Louisiana, comprises 58.7 percent of the total population.

2. That the plan of reapportionment offered by East Carroll Parish Police Jury and East Carroll Parish School Board is more satisfactory than other plans presented because it offers a zero deviation while all other plans considered did not.

3. That the plan of reapportionment offered by East Carroll Parish Police Jury and East Carroll Parish School Board does not dilute nor discriminate against the black population as the new voting unit from which officers of the jury and the board are to be elected is comprised of 58.7 percent blacks, or a substantial majority of blacks, while other plans considered diluted the black population of different areas within the parish significantly greater than the plan offered by the jury and school board.

4. That the plan recommended by East Carroll Parish Police Jury and East Carroll

Parish School Board has actually been in effect in East Carroll Parish since December 2, 1968, and the plan has not proved discriminatory against blacks.

5. That the plan represents the wishes of both public bodies, having been endorsed by two of the three black public officials now serving on these public bodies.

6. That the plan of apportionment offered by East Carroll Parish Police Jury and East Carroll Parish School Board is a constitutionally acceptable plan and meets all of the requirements of the "one-man, one-vote" rule of law.

7. That the evidence adduced by intervenor failed to show that the plan offered by the two aforesaid public bodies would discriminate against blacks or in any manner dilute the black population.

I read this order as addressing two separate considerations. The first is compliance with the one-man-one-vote mandate of *Reynolds v. Sims*. The second is a factual consideration of whether parish-at-large elections which obviously solve this problem completely, might have the effect of diluting the voting strength of black voters who, while holding a majority position in total population comprise a slight minority of the registered voters in the entire parish. Findings 3, 4, 5 and 7 are expressly addressed to this second problem and, when considered in the context of the hearing

record in this case which directly dealt with the dilution of voter effectiveness on a racial basis, appear to me to go to the heart of the proper questions that should concern the trier of fact in such a case. Certainly they are not limited to population statistics alone.

There can be no serious quarrel with the abstract legal premise that bare population statistics cannot become a talisman for determining whether dilution of voting strength has occurred. However, this concession is no impediment to an insistence that the District Court and the prior panel opinion of this court were entitled and indeed required to consider the overall size of the population in this small rural parish in approving the apportionment plan involved. It is perfectly valid to compare the effect which an at-large voting plan would have on the strength of an ethnic group in East Carroll Parish with the result of any similar multimember district plan in a populous urban area such as those which have been involved in the previous Supreme Court cases to date. The opportunity for participation in a parish-at-large election among less than 13,000 people is *greater* than the opportunity to be a meaningful part of the elective process in a single-member district which numbers over 100,000 persons. Judge Dawkins also made a specific oral finding that the proposed plan was not racially motivated and did not have a racially deterrent effect in its operation. With all of these factors which were before the District Court and which obviously formed a part of its decisional process, I cannot agree that the District Court imposed a constitutionally infirm reappor-

tionment plan which watered down voting rights on the basis of population statistics alone.

The almost gossamer distinction between weighing each man's vote equally and preventing the dilution of the overall voting strength of an identifiable racial element within the electorate can be an elusive concept at best. However, it is not one which in my view escaped either the attention of Judge Dawkins in his original opinion or the panel that initally heard this appeal. With full recognition that *White v. Regester* and the other precedents cited in footnote 2 of the en banc majority opinion discuss a panoply of factors which may help identify the existence of dilution, I find no rule requiring that every such factor must be tested for and found in every case in which a dilution issue may be raised. The common denominator which all precedents demand be weighed in reaching the required ad hoc fact adjudication is: has the plaintiff met the burden of demonstrating that members of the ethnic group in question have less opportunity than do other residents in the district to participate in the political processes and to elect legislators of their choice? Though not expressed in these terms, this is the rule Judge Dawkins applied in evaluating the design and impact of this plan.

II.

I would be quick to agree that the en banc majority is correct when it states that dilution of voting strength is a question of fact. The difference between us arises because of my view that the record establishes the

decision of the trial court in this case was not clearly erroneous. For example, Judge Coleman points out with emphasis in his dissent that the record in this case fails to reflect the number of *eligible* black citizens who have chosen not to register. How the majority opinion can conclude on such a record that the plaintiffs have demonstrated that past impediments to black voting still persist in this parish and that the persistence of such impediments is manifested in the disparity between black population and black voter registration is an enigma to me.[1] Until eligibility — based on age, residence, and freedom from other disqualifications established under federal law — is compared to nonregistration, this appears to be nothing more than a tenuous assumption. However, it is an assumption which is essential to the en banc court's fact reversal of the trial court as clearly erroneous.

The proof adduced in the District Court concerning the operation of the at-large election plan which governed the 1970 elections in this parish disclosed that a black candidate in the primary election for the Police Jury was defeated by only 9 votes. Another black candidate qualified for the second primary in which he ran third, 12 votes behind the second place white candidate. A third black candidate won in his contest against the incumbent president of the Police Jury, polling more votes than any candidate, not just for this post but in the entire election.

[1]For example, the 1970 census reflects that 49.6% of the black population of East Carroll Parish is under 18 years of age as compared to only 38.5% of the white population.

In the 1972 election which was held for only three of the nine school board posts, two blacks and one white candidate were elected. If the focus is upon "the design and impact" of at-large elections "in the light of past and present reality, political and otherwise," it is manifest that here there was no dilution of the black vote. But the majority sets its blinders so that it cannot see the present political reality because the election results were not before the District Court when it rendered its judgment.

While I unqualifiedly endorse the view that we cannot take cognizance of issues not raised or evidence that could have been but was not introduced in the court below, we are confronted with neither of these factors here. The 1972 election was held subsequent to the District Court's judgment of August 2, 1971. The result of the election is *not disputed* and was proffered to us on appeal. While the appellate process is going on, we can no more halt the political and electoral processes than we can stop the clock. We should not, however, turn either of them back when they are running properly. I see nothing novel or prejudicial about the consideration of current relevant *undisputed* matters brought to our attention on an appeal from an injunction decree. Indeed, our failure to do so is to shut our eyes to present political reality in East Carroll Parish and to do violence to the basic legal principle that injunction orders operate *in future*.

Finally, I am unable to agree with the majority that the 1972 election results should not be considered because of the purely speculative possibilities that the

election of a black might serve the selfish political purposes of a white candidate, or that it would be better for a white to lose an election than to lose a law suit.

III.

White v. Regester charts a clear course for adjudicating attacks on plans involving multimember districts — which in logic of analysis are merely one form of at-large voting, differing only in the extent of the geographic area involved. I cannot help but conclude that part III of the en banc majority opinion is diametrically at variance with the simple direct rule laid down by the Supreme Court in that case. By today's decision this court creates a rule which would limit the use of multimember districts to those instances where proof can be adduced which demonstrates that a "*greater* opportunity for participation" in the political process would be afforded to whichever race may be in the minority than would be possible in single member districts, or for a showing that the use of at-large election districts "*enhances* the opportunity" for minority participation in the political process. Without regard to the fact that such proof might be well-nigh to impossible to make, the law's announced preference for single member districts in populous areas does not mean that multimember districts must overcome some stigma to survive. To require that any particular plan be demonstrated to operate so as to afford an advantage to any minority ethnic group at the polling place is not an exercise of color-blind color consciousness but a legal mandate for reverse discrimination. It is not merely a rule out of keeping with the latest law of the Supreme Court, but is a mistake of major dimensions that will place the courts squarely in the center of the "political thicket."

The trier of fact in this case did not utilize an erroneous legal principle but rather applied considerations well within the rule just announced in *White v. Regester*. The record demonstrates ample evidence to indicate that the findings of fact made by the District Court were not clearly erroneous. For these reasons I would affirm the District Court. Most certainly I would refrain from creating any new rule regarding the use of multimember districts which runs counter to the most recent pronouncement of the Supreme Court. Thus, I dissent.

Adm. Office, U.S. Courts—Scofields' Quality Printers, Inc., N. O., La.

Appendix D

PART V. POLICE JURY

§ 1221. Election of police juries

Every parish governing authority in Louisiana organized under the police jury system of government, shall by ordinance, establish the size of their bodies provided that no police jury shall have less than five members nor more than the number of members serving on the police jury or, presently authorized for that police jury on July 20, 1968. Police jurors shall be elected at the state general election and shall serve for terms of four years each. Amended by Acts 1968, No. 445, § 1, emerg. eff. July 20, 1968, at 2:00 P.M.

Appendix E

SUB-PART A-1. REAPPORTIONMENT AND REORGANIZATION [NEW]

This Subpart, as enacted by Acts 1968, No. 561, §1, contained R.S. 17:63-17:68. The sections have been redesignated as R.S. 17:-71.1-17:71.6 on authority of R.S. 24:253.

Acts 1968, No. 561, §3, provides: "All laws, or parts of laws, in conflict herewith, are hereby repealed to the extent of any such conflict, such repeal to be effective January 1, 1972."

§ 71.1 Authority for reapportionment; basis

Each of the parish and city school boards, as heretofore created and organized, is hereby authorized to reapportion itself so that each member of said board represents as nearly as possible the same number of persons. Such reapportionment shall be based upon the 1970 federal census, or a special census as authorized hereinafter, and shall be accomplished and become effective when a school board has complied with the provisions of R.S. 17:71.4. Added by Acts 1968, No. 561, §1. Amended by Acts 1970, No. 319, §1, emerg. eff. July 13, 1970 at 2:00 P.M.

§ 71.2 Maximum and minimum size of boards; overlapping six year terms

In accomplishing the reapportionment authorized by this Subpart, each of said school boards may, by majority vote of said board as presently constituted, re-establish itself with not less than five nor more than

fifteen members or the number presently authorized for that school board, whichever is the greater. Whenever the size of a school board is to be changed by reapportionment, the school board may submit the proposition of size to the people.

Each school board member shall be elected for a term of six years, provided that those school boards whose members are elected for a term of four years when this Act becomes effective shall continue such term of office for its members.

The specific six year term of each member shall be so arranged approximately one-third of the members of said board shall stand for election every two years, said members to be elected at the same time and in the same election that members of the United States Congress are elected, provided that those school boards whose members are elected at a time other than the election of members of the United States Congress when this Act becomes effective shall continue such election for its members. Added by Acts 1968, No. 561, § 1. Amended by Acts 1970, No. 319, § 1, emerg. eff. July 13, 1970 at 2:00 P.M.

§ 71.3 Procedure for accomplishing reapportionment, special election districts; effective date of same

Each of the parish and city school boards shall use the federal census of 1970 as the basis upon which to accomplish reapportionment, provided however, that each of said school boards may authorize the taking of a special census to use as a basis for reapportionment. To this end, each of said school boards may employ qualified firms to take such special census, and may

employ such other consultants, attorneys, etc. as it deems desirable in order to assist such board in such reapportionment.

Each of said boards, after determining the number of members of said board after reapportionment is to be effective, may create such special school board election districts as it deems desirable which districts need not be coterminous with, nor have any relation to, the wards or precincts that may be created by the police jury or cities or towns within and for said parish or city, but any such special school board election districts created as a result of this Subpart must be compact and contiguous. The board may provide that all or part of its members shall be elected from such districts and may provide that one or more of its members may be elected at large from each of such districts.

If the board so desires, it may provide that all of the members of said board, as reapportioned, shall stand for election for two, four, and six year terms in order to maintain the overlapping terms and election of approximately one-third of such board every two years. If, on the other hand, the board so desires, and equitable apportionment can be established and maintained, it may provide that reapportionment be accomplished over a six-year period so that only certain members will stand for reelection the first year, as reapportioned, while others will stand for reelection, as reapportioned, two and four years later.

The special school board election districts provided for herein shall be for the purpose only of electing school board members and shall not be for the purpose

of levying taxes or issuing bonds. The creation of such special election districts shall not affect existing tax or bond districts and same shall remain in full force and effect as otherwise provided by law. Added by Acts 1968, No. 561, § 1. Amended by Acts 1970, No. 319, § 1, emerg. eff. July 13, 970 at 2:00 P.M.

§ 71.4 Effective date of such reapportionment

After each of said school boards has decided on its make-up, as reapportioned, it shall adopt a resolution, establishing the size of the board, terms of office of its members, date of election of its members and boundary lines of its special election districts, and stating the effective date of such reapportionment. This resolution shall be published in the official journal of the board and shall become effective and have the status of law as of the date specified in said resolution. Added by Acts 1968, No. 561, § 1. Amended by Acts 1970, No. 319, § 1, emerg. eff. July 13, 1970 at 2:00 P.M.

§ 71.5 Reapportionment every ten years

Each of said boards is authorized to again reapportion itself as set forth herein, based upon the census taken in 1980, and each of such boards is authorized to again reapportion itself every ten-year decennial thereafter, such reapportionment to be effective in time for the elections in the second year thereafter. No school board shall reapportion itself more often than every ten years. Added by Acts 1968, No. 561, § 1. Amended by Acts 1970, No. 319, § 1, emerg. eff. July 13, 1970 at 2:00 P.M.

§ 71.6 Purpose and intent of subpart; status during interim period

The purpose and intent of this Subpart is to authorize all school boards to reapportion themselves so that each member thereof represents as nearly the same number of constituents as is possible as required by recent decisions of the United States Supreme Court. It is also the purpose and intent of this Subpart to permit such school boards as much latitude and discretion as possible in accomplishing such reapportionment within the limits set forth herein

During the interim period between July 13, 1970 and the reapportionment of a school board in accordance with the provisions of this Subpart, the present laws with regard to the election of school board members shall remain in full force and effect. Provided, however, that whenever a school board accomplishes reapportionment, as required and set forth herein, such presently existing laws shall immediately cease to apply to said school board. Added by Acts 1968, No. 561, § 1. Amended by Acts 1970, No. 319, § 1, emerg. eff. July 13, 1970 at 2:00 P.M.

Supreme Court, U. S.
FILED
SEP 2 1975
MICHAEL RODAK, JR., CLERK

APPENDIX

Supreme Court of the United States

OCTOBER TERM, 1975

No. 73-861

EAST CARROLL PARISH SCHOOL BOARD
AND EAST CARROLL PARISH POLICE JURY,
Petitioners,

-V.-

STEWART MARSHALL,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED DECEMBER 3, 1973
CERTIORARI GRANTED JUNE 30, 1975

INDEX

Page No.

Docket Entries iv

Complaint 1

Order Denying Three Judge Court 25

Answer of Defendants 26

Stipulation 33

Proceedings of August 6, 1968 37

Order Granting Injunction 41

Letter of October 17, 1968, to Honorable Ben C. Dawkins, Jr. from Ford Land, Mayor, Town of Lake Providence, La. 47

Decree Providing for the Reapportionment of Police Jurors and School Board Members in East Carroll Parish, La. 50

Application to Tax Costs 53

Memorandum of Costs 54

Letter of November 25, 1968, to Honorable Ben C. Dawkins from East Carroll Parish Police Jury 56

Resolution 57

Letter of August 7, 1970, to John E. Brown from Jerris Leonard 58

Letter of March 11, 1971, to Honorable Ben C. Dawkins from William B. Ragland, Jr. 60

Resolution 61

Resolution 62

Page No.

Motion for Leave to Intervene 63

Order Granting Leave to Intervene 64

Complaint in Intervention 65

Plaintiff-Intervenor's Plans for Apportionment of the East Carroll Police Jury and School Board 70

Plan 1 (Drawing) 73

Alternate Plan (Drawing) 74

Letter of July 13, 1971, to Louis R. Sleeth from David L. Norman 75

Letter of July 14, 1971, to Alton L. Curtis, Clerk, from William B. Ragland, Jr. 77

Alternate Plan of Reapportionment of East Carroll Parish Police Jury 78

Letter of July 19, 1971, to Judge Ben C. Dawkins, from Thompson L. Clarke 83

Letter of July 13, 1971, to Thomsen L. Clarke from David L. Norman 85

Letter of July 19, 1971, to Alton L. Curtis, Clerk from William B. Ragland, Jr. 86

First Alternate Plan of Reapportionment of East Carroll Parish School Board 87

Letter of July 21, 1971, to David L. Norman from Holmes M. Mouser 91

Letter of July 21, 1971, to Honorable Ben C. Dawkins, from Holmes M. Mouser 92

Letter of July 22, 1971, to David L. Norman from Thompson L. Clarke 93

Page No.

Decree Providing for the Reapportionment of Police Jurors and School Board Members in East Carroll Parish, La., etc. 95

Notice of Appeal 98

Description of Parts of Transcript Appellants Intend to include in the Record and Statement of Issues they intend to present on Appeal 99

Transcript of Proceedings of July 29, 1971 100
Charles O. Reed 101
Louis L. Minsky 111
James C. Donovan 131
Jerry Walley 137
William B. Ragland, Jr. 140
William Jefferson 154
Francis Joseph Atlas, Sr. 175

Letter of July 30, 1971, to Honorable Ben C. Dawkins from William B. Ragland, Jr. 181

Opinion and Decree of District Court may be found in Petition for Certiorari at page 23

Panel Opinion of Court of Appeals for Fifth Circuit may be found in Petition for Certiorari at page 27

En Banc Opinion of Court of Appeals of Fifth Circuit may be found in Petition for Certiorari at page 43

CIVIL DOCKET
UNITED STATES DISTRICT COURT

Jury demand date:

CLOSED CASE 13927

nj

D. C. Form No. 106A Rev.

TITLE OF CASE	ATTORNEYS
MONROE CHARLES F. ZIMMER VS. JOHN J. McKEITHEN, JACK P. F. GREMILLION, WADE O. MARTIN, JR., DOUGLAS FOWLER, CAPTAN JACK WYLY, DOROTHY MORGEL, GEORGE F. FOX, MRS. NAOMI ROSENZWEIG, CECIL E. MANNING, JOHN E. BROWN, MISS IDA MAE COBB, JOHN R. HOWARD, BUREN A. BAYLES. 5-11-71 Intervenor STEWART MARSHALL	For plaintiff: McIntosh, Hester & Gilfoil, Mason P. Gilfoil, P.O.Box 468, Lake Providence, La. 71254 For Intvr: Stanley A.Halpin,Jr. and Geo.M.Strickler,Jr. 606 Common St.,NewOrleans, La. 70130, PH# 523-1797 all For defendant: Thompson L.Clarke, Dist.Atty,6th Jud.Dist. Court,St.Joseph, La. and William B.Ragland,Jr.,Asst.Dist.Atty., Lake Providence, La.

Mailed 9-27-71

STATISTICAL RECORD	COSTS		DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 5 mailed 8-9x-71	Clerk 7-12-68	$15.00	7-12	Gilfoil	$ 15.00	
	Infr.(NotApp)	5.00	7-17	CD T-3		$15.00
			8-9-71	LSDC(Halpin)	5.00	
J.S. 6 mailed	Marshal		8-11-71	CD#T-6		5.00
Basis of Action: IT UNDERVARIOUS FED STATUES FOR 3 JUDGE COURT &FOR JUDGM SA RS 1950 Sect. 1221 thru 1224 of Title 13 is Unconstitutional Action arose at: or Inj. against action by present olice juries until same is reapportianed.	Docket fee					
	Witness fees					
	Depositions					

13927

DATE 1968	PROCEEDINGS	Date Order Judgment
	Monroe	
7-12-68	Original complaint with exhibit attached, filed.	1
7-12-68	Original summons (13) with copies for service, issued.	
	Complaint delivered to Judge Dawkins, Jr., for consideration since it prays for convening of THREE JUDGE COURT. (Returned by BCDJR)	
7-18-68	Plaintiff's Order that the requestfor a 3 judge Court be DENIED AND THAT PLAINTIFF's application for injunctive relief be heard July 29th, 1968 at 9:30 A.M., signed and filed. (bcdjr) Notice of entry given.	2
7-18-68	Return on summons, filed: (9) Buren A.Bayles,John R.Howard,Miss Ida Mae Cobb, John E. Brown,Cecil E.Manning,Mrs. Naomi Rosenzweig,George F.Fox,Dorothy Morgel, & Captan Jack Wyly, all served 7-16-68.	3
7-19-68	Returns (4) on summonses filed: Fowler, Gremillion, Martin, & McKeithen served 7-16-68.	4
7-26-68	Motion by defendants and order upsetting hearing fixed in this case for 7-29-68; and REFIXING same at 9:30 AM on August 6, 1968, filed.(BCDJR) Notice of entry given by Clark on 7-26-68 by mailing copies of this entry to Mr. Gilfoil & Mr. Clarke.	5
8-6-68	Answer filed on behalf of defendants. Pretrial conference held this date. Case came on for hearing on application for reapportionment, both sides, announced ready, a stipulation was filed, matter submitted and ordered that there be judgment for plaintiff, enjoining the authorities from holding an election on 8-17-68 for Police Jury and School Board members, and directing the Police Jury of East Carroll Parish to file a plan for reapportionment by 10-1-68. Counsel for Pltf. is to prepare a decree in accordance with the Court's ruling and present same within 10 days.(BCDJR)	6 RART 7
8-6-68	Court Reporter's transcript of proceedings of 8-6-68, (4 pages), filed.	8
8-12-68	Judgment, containing Findings of Facts & Conclusions of Law; granting injunction against holding 8-17-68 election & directing Deft. Police Jury to submit reapportionment plan and that all police jurors & members of school board be elected pursuant to plan approved by this Court at November 1968 general election, filed.(BCDJR)	9
8-12-68	Writs to serve order granting injunction (13) with copies for service, issued.	
8-20-68	Returns (9) on writs issued 8-12-68 filed: Nine (9) services made on or about August 14, 1968. See returns for details.	10
8-22-68	Returnon (4) writs issued 8-12-68, filed: Services made on or about 8-13-68. See returns for details.	11
9-12-68	Letter to Judge Dawkins from Asst. Dist.Atty. Wm.B.Ragland,Jr. and handwritten order of Judge Dawkins thereon Extending to on or before December 1, 1968, the time in which Deft. Jury may submit its plan of reapporItionment heretfore ordered by the Court, filed. (BCDJR) Notice of entry given by Clerk on 9-12-68 by mailing copies of this entry to Mr. Clarke, Mr. Ragland & Mr. Gilfoil.	12
12-2-68	Decree, approved as to form by counsel for each side, with incorporated plan of reapportionment of police jurors & school board members in East Carroll Parish, La., calling for new election in certain wards, & casting Deft. Police Jury to pay all costs herein taxed, filed.(BCDJR) Notice of entry given byClerk to Mr. Gilfoil & Mr. Ragland,Jr. by mailing copies of this entry to them on 12-2-68 & Mr. Gilfoil requested to furnish Clerk with sufficient copies of said decree to serve copy thereof on each Deft.	13
12-3-68	Writs (13) to Serve 12-2-68 Decree, with attached copies of said Decree, directed to USM to serve copy thereof on each defendant, issued.	
12-16-68	Application by plaintiff for taxation of Costs with attached memorandum of costs in total sum of $219.66; Notice by plaintiff that same will be taxed by the Clerk at Shreveport, La. on Tuesday, Dec. 17, 1968, at 10 AM, with certificate of service, filed.	14
12-17-68	At 10 AM on this date the Clerk, pursuant to plaintiff's application therefor, taxed Court Costs for Pltf. & against EastCarrollParishPoliceJury in sum of $219.66. Notice of entry given on 12-18-68 by mailing copies of this entry to Mr. Ragland,Mr. Clarke, and Mr. Gilfoil.	

BEST COPY AVAILABLE

D. C. 110A Rev. Civil Docket Continuation

DATE 1968	PROCEEDINGS MONROE	Date Order or Judgment Not.
12-27-68	Letter to Judge Dawkins,Jr. dated 11-25-68 with attached resolution adopted by Deft. Police Jury on 11-18-68 setting foth plan to be incorporated in judgment, filed. (Judgment mentioned in this entry is presumably the one entered on 12-2-68).	15
12-13-68	Returns (4) on writs issued 12-3-68 filed: Four (4) services made on or about 12-9-68 - See returns for details.	16
1-3-69	Returns (9) on 12-3-68 writs filed: Services made on or about 12-4-68 - See returns for details.	17
-12-71	Letter to Judge Dawkins, Jr. from Asst.Dist.Atty. 6thJud.Dist.Court, E.Carroll Parish, wi th attached Police Jury and ~~RKX~~ School Board Reapportionment Plans, filed in response to Court's letter of ~~II~~ 2-17-71, filed.	18
-28-71	Set for hearing and/or trial on reapportionment on May 12, 1971.	
5-11-71	Motion by Stewart Marshal for leave to intervene as a plaintiff , Notice thereof, brief in Support thereof Order granting said motion; and attached complaint of intervenor, filed. (BCDJR)	19
5-12-71	This case came on for hearing on plan for reapportionment, after a conference, IT WAS ORDERED that plaintiff Intervenor file a suggested plan for reapportionment with map attached and brief in support thereof within 45 days and all parties are allowed 15 days thereafter in which to file opposition and brief in support thereto or opposition to plan on file by defendants. (BCDJR)	
-1-71	Plaintiff-Intervenors plans for Apportionment of the East Carroll Parish Police Jury and School Board, with attached maps, filed.	20
7-6-71	Motion by McIntosh, Hester, & Gilfoiland order signed by Judge Dawkins, Jr. permitting movers to withdraw as counsel of record for plaintiff, Charles F.Zimmer, with handwritten addition thereto, filed: ~~XRIXKXXXXf~~ "Plaintiff is to enroll new counsel within 30 daysor this case will be dismissed. Give him notice by certified mail, with return receipt requested."(BCDJR) Notice of entry given by Clerk 7-6-71 by ~~IM~~ mailing copies of this entry to Messrs. Halpin, Clarke, Ragland, and to Pltf. Zimmer thru Messrs. McIntosh,Hester & Gilfoil, since Clerk does not have Zimmer's address. (Said firm is ~~XXXX~~ hereby requested to forward this notice to Mr. Zimmer & place evidence of that fact in the record of this case)	21
-16-71	Defendant Jury's Alternative Plan of Reapportionment filed.	22
-20-71	East Carrol Parish School Board's plans of reapportionment filed pursuant to Judge Dawkins' order that same be filed within 15 days after the filing of the intervenor's plan, filed.	23
21-71	The Honorable Ben C. Dawkins, Jr. instructed the clerk to notify counsel that he has set a hearing in this case for Thursday, July 29th, 1971, at 1:00 P.M., in Monroe, Louisiana. Notice of entry given by clerk this date to Messrs. Zimmer, Halpin, Clarke, and Ragland.	24
-29-71	Case came on for hearing on a proposed plan filed by the East Carroll Parish School Board and Police Jury to reapportion; oral testimony adduced and documentary evidence filed on behalf of defendant until 5:00 P. M., and closed; oral testimony adduced and documentary evidence filed on behalf of plaintiff until 6:00 P. M., and closed. Oral arguments adduced on behalf of both sides. The Court ORDERED the plan submitted by the defendant to reapportion the East Carroll Parish School Board and Police Jury be approved as presented. Counsel for the defendants was instructed to prepare a formal judgment in accordance with the Court ruling. (BCDJR)	
-2-71	Decree in accord with Court's 7-29-71 ruling providing for the reapportionment of Deft. Jury & Board in accord with the plan set forth therein, filed (BCDJR) Notice of entry given by Clerk 8-3-71 by mailing certified copy thereof to Mr. Ragland and Mr. Halpin.	25

(over)

DATE 1971	PROCEEDINGS MONROE	Date Ord Judgment
8-9-71	~~XXXXXXXXX~~ Intervenor's Notice of Appeal from 8-2-71 judgment; Description of parts of transcript appellants intend to include in record & statement of issues they intend to present on appeal, and Bond for Costs on Appeal in sum of $250 - Sharon Myrick & Leslie Millenson, Sureties, filed. Copy of said documents mailed by Clerk 8-9-71 to Thompson L.Clarke. Copy of Notice ofAppeal also mailed by Clerk to Clerk of Court of Appeals on 8-9-71.	26
10-13-71	Order by Court of Appeals extending the time for filing the Court Reporter's transcript to and including October 28, 1971, filed.	27
10-18-71	Court Reporter's transcript (1 Vol. 81 Pages) of 7-29-71 proceedings before Judge Dawkins, Jr., filed.	28

UNITED STATES DISTRICT COURT
Western District of Louisiana
This is to certify that the above and foregoing contained on this and preceding 3 page is a true and correct copy of the original.

October 27 1971
ALTON L. CURTIS, Clerk
By Carolyn Lane Lee
Deputy Clerk

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

MONROE DIVISION

CHARLES F. ZIMMER

CIVIL ACTION 13927

VERSUS

JOHN J. McKEITHEN
JACK P. F. GREMILLION
WADE O. MARTIN, JR.
DOUGLAS FOWLER
CAPTAN JACK WYLY
DOROTHY MORGEL
GEORGE F. FOX
MRS. NAOMI ROSENZWEIG
CECIL E. MANNING
JOHN E. BROWN
MISS IDA MAE COBB
JOHN R. HOWARD
BUREN A. BAYLES

U. S. DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
FILED
11:30 am
ALTON L. CURTIS, CLERK
By: Deputy

COMPLAINT

I.

This action is brought under and this court has jurisdiction pursuant to Section 2 of Article 4 of the Constitution of the United States, which provides as follows:

> "The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states."

And Section 1 of the Fourteenth Amendment to the Constitution of the United States, which provides in part:

> "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person within its jurisdiction the equal protection of the laws."

II.

This court has original jurisdiction of this action, and the plaintiff has the right to bring this suit, under the Civil Rights Act, 17th Statute L. 13, and 16th Statute L. 144; USC, Title 42, Section 1983 and 1988, which provide as follows:

"Section 1983. Civil Action for Deprivation of Rights.

Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in any action at law, suit in equity, or other proper proceeding for redress." (R.S. Sec. 1979)

and

"Section 1988. Proceedings in vindication of Civil Rights.

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this chapter and Title 18, for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States,so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal case is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty. (R.S. Sec. 722)

Additionally, this Court has jurisdiction under 62 Stat. L. 932, 28 U.S.C. 1343(3) and 1343(4). This section reads as follows:

"Section 1343. Civil Rights and Elective Franchise.

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(3) To redress the deprivation, under color of any state law, statute, ordinance, regulation, custom or usage of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or all persons within the jurisdiction of the United States.

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote. As amended Sept. 3, 1954, c 1263, Sec. 42, 68 Stat. 1241; Sept. 9, 1957, Pub. L. 85-315, Part III, Sec. 121, 71 Stat."

III.

Under 62 Stat., L. 968; 28 U.S.C. Section 2281, et seq., special provision is made for hearing cases of action involving restraining the enforcement, operation or execution of any state statute by restraining the action of any officer of such state whenever said application is based on the unconstitutionality of such statute.

IV.

Relief hereunder is also sought pursuant to Federal Declaratory Judgment Act. U.S.C. Title 28, Section 2201, which provides:

"In a case of actual controversy within its jurisdiction, except with respect to Federal taxds, any Court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such."

And Section 2202, which provides:

"Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment."

V.

Under U.S.C. Title 28, Section 2281, et seq., provision is made for the convening of a three Judge District Court where the relief requested is an interlocutory or permanent injunction restraining the enforcement, operation, or execution of any state statute by restraining the action of any officer of such state in the enforcement or execution of such statute. As appears more fully below, plaintiff seeks such relief and requests the convening of such Court.

VI.

Plaintiff is a citizen and taxpayer of the United States and of the State of Louisiana, and a resident of the Parish of East Carroll, whose address is Lake Providence, Louisiana, and who is a duly qualified registered voter (Democrat) of Ward 3 of the Parish of East Carroll, Louisiana, and is entitled to vote in primary, general and special elections for members of the Police Jury and School Board in and for the Parish of East Carroll, State of Louisiana.

VII.

The above named plaintiff brings this action on his own behalf, and on behalf of all other voters in the Parish of East Carroll, State of Louisiana, who are similarly situated.

VIII.

The defendants and each of them are citizens of the United States and of the State of Louisiana and reside in said state, and are sued in their representative capacity as hereinafter set forth.

IX.

The defendant, John J. McKeithen, is the duly elected and acting Governor of the State of Louisiana, and as Governor, has functions to perform with reference to the election laws of the State of Louisiana, which are set forth hereinafter, and also as Governor and Chief Executive Officer of the State of Louisiana, with offices in the State Capitol at Baton Rouge, Louisiana, in the Parish of East Baton Rouge, under U.S.C. Title 28, Section 2284 must be notified of any action in a United States court involving the enforcement of a state statute.

X.

The defendant, Jack P. F. Gremillion, is the duly elected and acting Attorney General of the State of Louisiana, and is Chief Legal Officer of the State, with offices in the State Capitol at Baton Rouge, Louisiana, Parish of East Baton Rouge, Louisiana, and under the provisions of Louisiana R. S. 13:4241, and under U.S.C. Title 28, Section 2284 must be notified of any action in a United

States Court involving the enforcement of a state statute.

XI.

The dfendant, Wade O. Martin, Jr., is the duly elected and acting Secretary of State of the State of Louisiana, with offices in the State Capitol at Baton Rouge, Louisiana, Parish of East Baton Rouge, Louisiana, and as Secretary of State has certain duties with reference to the holding of elections for Members of the Police Jury and School Board in and for the Parish of East Carroll, State of Louisiana, as hereinafter set forth.

XII.

The defendant, Douglas Fowler, is the duly elected and acting State Custodian of Voting Machines of the State of Louisiana with offices in the Pentagon Courts, Baton Rouge, Louisiana, in the Parish of East Baton Rouge, Louisiana, and as State Custodian of Voting Machines has certain duties with reference to the holding of elections for Members of the Police Jury and School Board in and for the Parish of East Carroll, State of Louisiana, as hereinafter set forth.

XIII.

This action is brought against the following named defendants in their representative capacities and they are sued individually and also as representatives of all of the officials of the Democratic Committee in and for the Parish of East Carroll, State of Louisiana, and of members of the Board of Supervisors of Elections in and for the Parish of East Carroll, State of Louisiana, each having the duties and responsibilities as hereinafter set forth pertaining to the elections of Members of the Police Jury and School Board in and for the Parish of East Carroll, State of Louisiana:

(a) Defendant, Captan Jack Wyly, whose residence address is Highway 65 North, Lake Providence, Louisiana, is the duly elected and acting Chairman of the Democratic Executive Committee for the

Parish of East Carroll, State of Louisiana.

(b) Defendant, Dorothy Morgel, whose residence address is Herring Street, Lake Providence, Louisiana, is the duly elected and acting Secretary of the said Democratic Executive Committee for the Parish of East Carroll, State of Louisiana.

(c) Defendant, George F. Fox, whose residence address is Island Point Drive, Lake Providence, Louisiana, is the duly appointed and acting President of the Board of Supervisors of Elections of the Parish of East Carroll, State of Louisiana.

(d) Defendant, Mrs. Naomi Rosenzweig, whose residence address is 309 Davis Street, Lake Providence, Louisiana, is a duly appointed Member of the Board of Supervisors of Elections of the Parish of East Carroll, State of Louisiana.

(e) Defendant, Cecil E. Manning, ose residence address is Highway 65 North, Lake Providence, Louisiana, is the duly appointed Registrar of Voters and member of the Board of Supervisors of Elections of the Parish of East Carroll, State of Louisiana.

XIV.

This action is brought against the following named defendants in their representative capacities and they are sued individually and also as representatives of all of the officials and members of the Police Jury for East Carroll Parish, Louisiana, and of all of the officials and members of the School Board for East Carroll Parish, Louisiana:

(a) Defendant, John E. Brown, whose residence address is Highway 65 North, Lake Providence, Louisiana, is the duly elected and acting President of the Police Jury for East Carroll Parish, Louisiana.

(b) Defendant, Miss Ida Mae Cobb, whose residence address is 1706 Lake Street, Lake Providence, Louisiana, is the duly appointed and acting Secretary of the Police Jury of East Carroll Parish, Louisiana.

(c) Defendant, John R. Howard, whose residence address is Highway 65 North, Lake Providence, Louisiana, is the duly elected and acting President of the School Board for East Carroll Parish, Louisiana.

(d) Defendant, Buren A. Bayles, whose residence address is Schneider Lane, Lake Providence, Louisiana, is the duly appointed and acting Secretary of the School Board for East Carroll Parish, Louisiana.

XV.

The primary question herein is the constitutionality of the apportionment of members of the Police Jury and School Board for the Parish of East Carroll, State of Louisiana, and the re-apportionment of the Police Jury and School Board for the Parish of East Carroll, State of Louisiana, as set forth in Title 33, Sections 1221, through 1224 of the Louisiana Revised Statutes of 1950, as amended, and the holding of elections for members of the Police Jury and School Board for the Parish of East Carroll, State of Louisiana, thereunder.

XVI.

Title 33, Section1221 of the Louisiana Revised Statutes of 1950, as amended, provides as follows:

> "Election of police juries
>
> At every general state election, there shall be elected as many police jurors for each ward of each parish in this state, by the qualified voters of said wards, as provided by law."

XVII.

Title 33, Sections 1222 through 1224 of the Louisiana Revised Statutes of 1950, as amended ,provides for and determines the number of police jurors each ward of a parish is allotted, as well as the granting of authority for the redistricting of the wards; said aforementioned statutes provide as follows:

> "Section 1222. Additional police jurors in parishes having 50,000 or more inhabitants.

In parishes having a population of fifty thousand or more, for each parish ward, there shall be elected, in the manner provided by law, in addition to the police juror to which the ward is entitled, one additional police juror for each ten thousand inhabitants which the ward contains, said apportionment to be based upon the last preceding United States census; also one additional police juror for each additional ten thousand inhabitants, or part thereof in excess of seven thousand five hundred, to be selected from the resident voters of the ward."

"Section 1223. Additional police jurors in parishes having less than 50,000 inhabitants.

In each parish having a population of less than fifty thousand inhabitants, there shall be elected in the manner provided by law in addition to the police juror to which the ward is entitled, an additional police juror for each five thousand inhabitants which the ward contains; also, one additional police juror for each additional five thousand inhabitants or part thereof in excess of twenty-five hundred inhabitants. The police jurors shall be residents of the ward from which they are elected and shall be elected by the voters of the ward."

"Section 1224. Police Jury may redistrict parish into wards; appointment of temporary officers.

The policy jury of each parish may redistrict their parish into not less than five or more than twelve police jury wards, as the convenience of the people may require, and shall at the same time district these police jury wards into one or more justice of the peace and election wards, as they think proper, and shall designate said wards numerically and in consecutive order. No police jury shall redistrict their parish as herein provided except by a two-thirds vote of the police jury, recorded by yeas and nays. Whenever any policy jury redistricts their parish and creates more than the number of wards such parish presently contains, the police jurors, justices of the peace and constables of the additionally created wards shall be appointed therefor by the governor, by and with the advice and consent of the senate, to serve until the next general election."

XVIII.

The apportionment and reapportionment of parish school boards (those without special legislative authority to reapportion) is strictly dependent upon the apportionment and number of members of the Policy Jury in each parish. The East Carroll Parish School

Board does not have the special legislative authority to reapportion itself.

XIX.

The geographical location of the wards in East Carroll Parish, Louisiana, has not changed for a number of years; however, pursuant to R.S. 33:1223, supra, a third police juror was added to Ward 3 in 1967 (the third member was actually elected and took office in 1968).

XX.

According to the 1960 United States census, the Parish of East Carroll, State of Louisiana, had a total population of 14,433 inhabitants.

XXI.

According to the 1960 United States census, the population of the seven wards of East Carroll Parish, Louisiana, together with the present number of registered voters in the seven wards of East Carroll Parish, and together with the number of police jurors and school board members representing each ward, is as follows:

WARD	NUMBER OF POLICE JURORS AND SCHOOL BOARD MEMBERS	POPULATION PER JUROR OR SCHOOL BOARD MEMBER	REGISTERED VOTERS PER JUROR OR SCHOOL BOARD MEMBER
1	1	1,399	443
2	1	2,050	706
3	3 (only 2 shool board members, as hereinafter set forth)	7,851	3,878
4	1	395	86
5	1	983	345
6	1	720	250
7	1	1,035	281

XXII.

Under the laws of Louisiana, pertaining to apportionment and reapportionment of parish police juries and school boards, the wards can be redistricted only if on the approval of two-thirds of a

quorum of policy jury members, and upon proper resolution by said jurors. However, the police jury's only discretion in reapportioning is redrawing ward boundary lines - it can not determine the number of jurors per ward, nor can it determine the ratio of people or voters to police jurors; the ratio of people to police jurors is fixed by legislative act, namely, Title 33, Section 1222 and 1223 of Louisiana Revised Statutes, as amended, supra. Parishes with population less than fifty thousand are entitled to one juror for each ward as well as an additional one juror for every five thousand people in the ward, or a part thereof exceeding two thousand five hundred people. Since the number of parish school board members is determined by the number of members on the police jury in each parish, the same situation holds for all parish school boards not having legislative authority to reapportion themselves, and particularly to the East Carroll Parish, Louisiana School Board.

XXIII.

The Louisiana laws now applicable to apportionment and reapportionment of police jurors and school board members substantially vary from the equal population rule for the drawing of districts for units of local government as required by the Fourteenth Amendment to the Constitution of the United States; it is obvious that the densely populated areas have been and are grossly underrepresented; and that the sparsely populated areas are overrepresented. The present Louisiana laws relating to the redistricting of police juries and school boards do not permit these inequities to be remedied.

XXIV.

The provision of Louisiana law which guarantees each ward of a parish at least one juror is impractical from the standpoint of achieving proper reapportionment and, inconsistent with the concept of equal representation - this guarantee is based upon the now antiquated concept of geographical representation.

The provision of law which establishes a fixed ratio of 10,000 or 5,000 people for each additional representative of a police jury ward now serves as an impediment in achieving equal representation. The fixed ratio concept was acceptable and achieved a certain degree of equity in representation when apportionment was permissible on a geographical basis and this was the case in the 1940's when the law was drafted. But the "one-man, one-vote" rule of representation today would necessitate that the ratio of people to representatives be variable and be determined by the total number of such representatives and the total number of people in the overall area.

XXV.

Plaintiff, as a citizen of the United States, the State of Louisiana, and Ward 3 of East Carroll Parish, is denied equal protection of the law accorded to him by Section 1 of the Fourteenth Amendment to the Constitution of the United States. This provision of the Constitution of the United States contains a guarantee to the citizens of their right to vote in state and local elections and that their vote shall be equally effective with any other vote cast at said election.

XXVI.

Due to the failure of the police jury of East Carroll Parish, Louisiana, to redistrict, and to the impossibility of its redistricting resulting in equal population districts, the votes of plaintiff and others similarly situated are debased and they are denied the equal protection of the law as guaranteed by the Fourteenth Amendment.

XXVII.

The present apportionment of the police jury and school board of East Carroll Parish, Louisiana, as shown above, constitutes "invidious discrimination" in violation of the equal protection clause of the Fourteenth Amendment and is, therefore, unconstitutional, null, and void.

XXVIII.

The East Carroll Parish School Board and the East Carroll Parish Police Jury have general governmental powers over the entire geographic area of East Carroll Parish.

XXIX.

Title 33, Sections 1221 through 1224,relating to apportionment and reapportionment of police jury wards (and consequently parish school boards)are contrary to the equal protection clause of the Fourteenth Amendment to the Constitution of the United States and therefore unconstitutional, null, and void.

XXX.

Plaintiff, as a citizen of the United States and of the State of Louisiana, has the right conferred by the Constitution of the United States and of the Constitution of the State of Louisiana to have the entire membership of the police jury and school board for East Carroll Parish, Louisiana, reapportioned and elected on the basis of the 1960 U.S. Census pursuant to the "one-man, one-vote" rule.

XXXI.

The laws of the State of Louisiana provide that members of the parish police juries are elected for a term not exceeding the next general election.

XXXII.

The laws of the State of Louisiana provide that members of the parish school boards are elected for a term of six years.

XXXIII.

The laws of the State of Louisiana (R.S. 18:281) require all nominations of candidates by political parties for parochial offices of the State of Louisiana to be by direct primary and the Secretary of State of the State of Louisiana is prohibited from placing the name of any person as a candidate for any political

party on the ballots who is not nominated in accordance with the primary election laws of this state.

XXXIV.

Louisiana Revised Statutes 18:300 requires that within ten days after the call by the State Central Committee for the primary to nominate candidates for parochial offices,

> "... the respective district and parochial committes shall meet in order that all nominations for district, parochial and ward offices and for members of the Legislature of the State of Louisiana ..."

who are required by law to be voted on at the general state election, be made by direct primary to be held on the same date and at the same place at which candidates for state offices are voted for.

XXXV.

Louisiana Revised Statues 18:632 provides that:

> "The Secretary of State shall furnish, upon application, blank forms for the nomination of candidates."

which includes nomination of candidates for members of parochial offices of the State of Louisiana.

XXXVI.

As provided in Louisiana Revised Statutes 18:310, it is necessary that all persons desiring to become a candidate for a member of a parochial office of the State of Louisiana in the primary held by the respective parties to file their application with the respective officers of the committee designated in order to qualify as a candidate for election in the primary election called by the respective committees.

XXXVII.

As provided in Louisiana Revised Statutes 18:307 it is necessary that all objections to candidates for nomination by political parties, including candidates for members of parochial offices of the State of Louisiana, be filed with the committee, the chairman or the secretary thereof, who accepted the application of

the candidate for nomination, and it is further necessary that the committee shall meet and hear the evidence offered by any of the parties or their counsel as to the objection which has been filed with the committee.

XXXVIII.

As provided in Louisiana Revised Statutes 18:361(c), after the date has passed on which a candidate is allowed to enter and file his notification in the primary, if one or more of the rival candidates for any particular office of the State of Louisiana dies, the committee is obligated to reopen the period for qualifying for a period of five days after the death of the candidate, provided that the death occurs more than thirty (30) days before the date fixed for the primary.

XXXIX.

It is the duty and responsibility of the said Executive Committee, under the provisions of Louisiana R.S. 18:339, to select the commissioners and conduct the election, including that of candidates as nominees for members of parochial offices of the State of Louisiana, as provided in Louisiana R.S. 18:340.

XL.

It is the duty and responsibility of the Secretary of State of the State of Louisiana, under Louisiana R.S. 18:315, to furnish the ballots to be used in all primary elections, including that for nominees as candidates for members of parochial offices of the State of Louisiana.

XLI.

As provided in Louisian a R.S. 18:355, it is the duty of the Chairman of the said Executive Commiette, immediately upon receiving the returns mailed to him by the commissioners to open them and cause them to be tabulated and compiled and within six days after the primary the committee shall convene and the chairman thereof shall submit to it the tabulated statement showing

the results of the primary, including that for nominess as candidates for members of parochial offices of the State of Louisiana, and the original returns received by him.

XLII.

In the event no candidate or candidates, including that for member or members of parochial offices, receives a majority of the votes cast in the first primary, then it is the duty of the said Executive Committee, as provided in Louisiana R.S. 18:358, to select from those receiving the highest vote, candidates for the second primary, as set forth in Louisiana R.S. 18:358.

XLIII.

It is the duty of the said Executive Committee, as set forth in Louisiana R.S. 18:360, to canvass and compile the votes of the second primary, and to declare and to promulgate the results thereof in the same manner as in the first primary.

XLIV.

In the event only one candidate files for any particular office for which the primary has been called, under the provisions of Louisiana R.S. 18:361(c), the said Executive Committee ordering the primary shall be immediately convened and the person thus unopposed shall be declared to be the nominee of the party, without the necessity of holding a primary for that office.

XLV.

Louisiana R.S. 18:362 provides that in all cases where there are vacancies among the nominees elected by any political party, including that for members of parochial offices of the State of Louisiana, and if no person applies to become a candidate for a political office, including that for members of parochial offices, within the time fixed by law or the call of the committee ordering the primary, the committee may select a nominee and certify the name as the nominee of the party to the Secretary of State.

XLVI.

According to the provisions of Louisiana R.S. 18:544, the general election for State and Parish officers, shall be held once every four years on the first Tuesday next following the expiration of the seventh week after the date on which the second primary for nomination of candidates for such offices as held by political parties.

XLVII.

It is the duty and responsibility of the Governor of the State of Louisiana, under the provisions of Louisiana R.S. 18:545, to issue a proclamation giving notice at least thirty days before every general election, including that for members of parochial offices of the Stateof Louisiana, and to have said proclamation published in the official journal of the State of Louisiana.

XLVIII.

It is the duty and responsibility of the Board of Supervisors, under the provisions of Louisiana R. S. 18:555, to appoint the election commissioners from lists furnished by each political party authorized to make nominations, which commissioners shall maintain order and enforce obedience of their lawful commands during an election (Louisiana R. S. 18:558); to canvass and count the ballots immediately upon closing of the polls (Louisiana R.S. 18:560); to announce the vote thereof as soon as the count has been completed (Louisiana R.S. 18:561); and to make due return thereof as required by Louisiana R.S. 18:567, including elections for members of the Senate of the State of Louisiana.

XLIX.

It is the duty and responsibility of the Board of Supervisors of each parish, within six days after the closing of the polls, to make a true compiled statement of the returns of the commissioners showing the results of the election, including members of parochial offices of the State of Louisiana, and to forward a copy of the same to the Secretary of State of the State of Louisiana,

and one to the Clerk of the district court for the Parish in which the election is held as provided in Louisiana R.S. 18:567.

L.

It is the duty of the Secretary of State of the State of Louisiana, under the provisions of Louisiana R.S. 18:567, to furnish, at the expense of the state, envelopes, blank statements, blank affidavits, and all necessary blank forms for use by the commissioners at each polling place in the conduct of the election count and canvass and return of the votes cast at each election, including that for members of parochial offices of the State of Louisiana.

LI.

It is the duty and responsibility of the Secretary of State of the State of Louisiana to furnish the official ballots for the voting, upon candidates, including those for members of parochial offices, at general elections as provided in Louisiana R.S. 18:672.

LII.

It is the duty and responsibility of the Secretary of State of the State of Louisiana, under the provisions of Louisiana R.S. 18:691, to prepare full instructions for the guidance of voters, as to obtaining ballots, the manner of marking them, the method of obtaining assistance and obtaining new ballots in place of those accidentally spoiled for use at each election including that for members of parochial offices of the State of Louisiana.

LIII.

It is the duty and responsibility of the Secretary of State of the State of Louisiana, under the provisions of Louisiana R.S. 18:701, to send a sufficient number of tally sheets and cards of instruction to the boards of supervisors of each of the several parishes of the State for voting on all candidates, includ-

ing that for members of parochial offices of the State of Louisiana.

LIV.

It is the duty and responsibility of the Secretary of State of the State of Louisiana, under Louisiana R.S. 18:1174, to prepare and certify the ballots to be used in the voting machines, and to prepare the absentee ballots and furnish them to the clerks of court for the various parishes and municipalities and to furnish to the Custodian of Voting Machines the necessary ballots to be inserted upon the face of the voting machines for the voting of candidates, including that for members of parochial offices of the State of Louisiana.

LV.

It is the duty of and responsibility of the Secretary of State of the State of Louisiana, under the provisions of Louisiana R.S. 18:1072, to furnish to the clerk of the district court for each respective parish absentee ballots for the voting upon candidates for various offices in any primary, special or general election, including that for members of parochial offices of the State of Louisiana.

LVI.

It is the duty of Douglas Fowler, the duly elected Custodian of Voting Machines of the State of Louisiana, under the provisions of Louisiana R.S. 18:1175, immediately upon being furnished by the Secretary of State with ballots as required by Louisiana R. S. 18:1174, to prepare the voting machines for election, including that for members of the Senate, by placing them in order, inserting the proper ballot, and testing and adjusting the machines for the election.

LVII.

It is the duty and responsibility of the Custodian of Voting Machines, under the provisions of Louisiana R.S. 18:1163, to prepare all voting machines necessary for elections and deliver

the machines and other election supplies to the custody of the Parish Custodian in complete readiness for use at the polls, including that for members of parochial offices of the Stateof Louisiana.

LVIII.

Cost of all ballots, sample ballots, seals, envelopes, tabulation blanks, poll lists and certificates, promulgating election results and of all other election materials and supplies necessary or required by law for the primary and general elections (including special elections) for state and parish offices throughout the state, shall be paid by the Secretary of State from appropriations to the office of the Secretary of State, as provided in Louisiana R.S. 18:1195(d).

LIX.

Under Article VIII, Section 15 of the Constitution of the State of Louisiana, and Louisiana R.S. 18:732, it is the duty and responsibility of the Secretary of State of the State of Louisiana to receive certifications of the clerks of court of the various parishes of the state when there are no independent candidates and that only one party nominates for the particular office, which may include the office of a member of the Senate of the State of Louisiana, and when the Secretary of State of the State of Louisiana certifies that such certificates have been filed with him, the Governor of the State of Louisiana may direct the Board of Supervisors of elections, to dispense with the holding of any general election, except general state election and any congressional election, and to certify the only candidate to be the choice of the people, and duly elected to said office, which office may include a member of the Senate of the State of Louisiana.

LX.

It is the duty and responsibility of the Secretary of State of the State of Louisiana, under the provisions of Louisiana R.S. 18:570, to publish in the official journal of the State of

Louisiana the names of all candidates voted for and the number of votes cast for each, as shown by the returns transmitted to him by the Board of Supervisors of elections of each parish of the State and he shall declare the persons receiving the greatest number of votes cast for the office for which persons were candidates to have been duly elected.

LXI.

For these reasons, the provisions of the United States Constitution, the Federal Statutes, the Constitution of the State of Louisiana, and the State Statutes hereinabove cited and referred to, the plaintiff is entitled to have the police jury membership and school board membership of the Parish of East Carroll, State of Louisiana, reapportioned or redistricted on the basis of the "one-man, one-vote" rule of representation, and for a writ of injunction prohibiting the defendants, and each of them, from holding any election, primary or general, for members of the police jury and school board for the Parish of East Carroll, State of Louisiana, not consistent with the above, all in accordance with law.

LXII.

The East Carroll Parish Democratic Executive Committee met on the 17th day of June, 1968, and issued a call for an election for nominees to the school board from Wards 1, 5, and 6 of East Carroll Parish, Louisiana, and for an election for a nominee from Ward 7 to the police jury of East Carroll Parish, Louisiana, said primary election to be held on August 17, 1968; a certified copy of the resolution calling for this election is attached hereto and made a part hereof as "Exhibit Zimmer No. 1." Unless defendants are restrained from holding said election, plaintiff, and all others similarly situated, will be denied their constitutional right to participate in the election of school board members and in the election of a police jury member.

LXIII.

Nominations have been, in the past, tantamount to election in East Carroll Parish, Louisiana. Over ninety per cent of the registered voters in East Carroll Parish, Louisiana, are registered as Democrats. In any event, nomination of party candidates on a ward basis, just as election of candidates on a ward basis, when the wards have substantially unequal population, effectively deprives plaintiff of his right to vote in accordance with the "one-man, one-vote" rule.

WHEREFORE, the premises considered, plaintiff respectfully prays, on behalf of himself and others similarly situated, that this Honorable Court take jurisdiction of this matter; that a special three judge court be called to hear and determine this case as provided by law in 62 Stat. L. 968; 28 U.S.C. 2281, et seq., and declare the rights of the plaintiff and others similarly situated pursuant to 58 Stat. L. 890; 28 U.S.C. 2201, in the premises, to-wit:

A. The present apportionment and districting of the police jury and school board for the Parish of East Carroll, State of Louisiana, has deprived and continues to deprive plaintiff of liberty and property without due process of law and has denied and continues to deny plaintiff the equal protection of the laws in violation of the Fourteenth Amendment of the Constitution of the United States;

B. The police jury and school board of the Parish of East Carroll, State of Louisiana, be redistricted and reapportioned on the basis of "one-man, one-vote" rule of representation;

C. The right of plaintiff, and the rights of others similarly situated, to vote, as guaranteed by the laws and Constitution of the State of Louisiana and of the United States of America, have been impaired;

D. Sections 1221 through 1224 of Title 33, Louisiana Revised Statutes of 1950, as amended, be declared unconstitutional,

void, and uneforceable against the plaintiff and others similarly situated, as denying to them the basic guarantee of equal representation afforded by the equal protection clause of the United States Constitution; and alternatively, should this court decide that said statutes are not per se unconstitutional,

E. Sections 1221 through 1224 of Title 33, of Louisiana Revised Statutes 1950, as amended, have been applied and continue to be applied by the police jury of the Parish of East Carroll, State of Louisiana, in such a manner as to deprive plaintiff and others similarly situated of the equal protection of the laws guaranteed to them by the Fourteenth Amendment to the Constitution of the United States.

Plaintiff further prays that an interlocutory injunction issue herein, restraining and enjoining the defendants herein, and each of them, from proceeding with the proposed primary elections of August 17, 1968, or, alternatively, ordering said election be held with all candidates running at large in East Carroll Parish, Louisiana; and

Plaintiff further prays for all such additional orders, interlocutory decrees, and such other general and equitable relief as the plaintiff may prove himself from time to time entitled.

Charles F. Zimmer, Plaintiff

McINTOSH, HESTER & GILFOIL
P. O. BOX 468
LAKE PROVIDENCE, LOUISIANA 71254
ATTORNEYS FOR PLAINTIFF

BY: Mason P. Gilfoil

June 17, 1968.

The East Carroll Parish Democratic Executive Committee met this day in the Police Jury Office, Court House, Lake Providence, Louisiana. All members were present in person or by proxy except Max E. Stockner, Arthur Thompson, L.E. Pippin.

The Chairman stated that the purpose of the meeting was to call an election for the members of School Board, from Wards One, Five and Six of East Carroll Parish, Louisiana, and an election for Police Juror, Ward Seven, East Carroll Parish, Louisiana.

Motion by Sam D. Sandidage: That an election be held for the office of Policy Juror for Ward Seven, East Carroll Parish, Louisiana; said Primary Election to be held August 17, 1968. Seconded and Carried.

Motion by Jo Ann Cook: That an election be hld on August 17, 1968 for the offices of School Board Member from the following Wards: Ward One, Five and Six. Seconded and Carried.

Motion by Jo Ann Cook that the qualifying fee shall be set at the sum of $26.00 for candidates for both the School Board Offices and the Policy Jury Office. Seconded and Carried.

Motion: by Sam D. Sandidage. That the period in which all qualified persons shall file the proper papers shall be from this date to and inclusive of June 24, 1968 at the hour of 6:00 P.M. o'clock, and that all papers shall be Filed with the Chairman at his office at 106 Hood Street, Lake Providence, Louisiana.

Motion that meeting recess until 6:00 P.M. o'clock June 24, 1968. Carried.

Minutes signed by the Chairman and Acting Secretary, this the 18th day of June, 1968.

Chairman, East Carroll Parish Democratic Executive Committee.

Jo Ann Cook
Acting Secretary.

BEST COPY AVAILABLE

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

MONROE DIVISION

CHARLES F. ZIMMER

VERSUS CIVIL ACTION NO. 13927

JOHN J. McKEITHEN
JACK P. F. GREMILLION
WADE O. MARTIN, JR.
DOUGLAS FOWLER
CAPTAN JACK WYLY
DOROTHY MORGEL
GEORGE F. FOX
MRS. NAOMI ROSENZWEIG
CECIL E. MANNING
JOHN E. BROWN
MISS IDA MAE COBB
JOHN R. HOWARD
BUREN A. BAYLES

U. S. DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
FILED
JUL
ALTON L. CURTIS, CLERK
By: Deputy

ORDER

The request by plaintiff for a three judge court, pursuant to 28 U.S.C. Section 2281, et seq., was presented to the court this date. The complaint alleges, generally, that plaintiff and others similarly situated have been and continue to be denied equal protection of the laws in the election of school board members and police jurors in East Carroll Parish because of the great disparity in the population of the several wards in said parish. The complaint further alleges that the police jury and school board of said parish have general governmental powers and prays, among other things, for injunctive relief in the primary election scheduled for August 17, 1968.

In view of the decision of the Supreme Court of the United States in Avery v. Midland County, Texas (April, 1968), _____U. S. _____, 88 S. Ct. 1114, _____ L. Ed. 2d _____, this court is of the opinion that there is an insubstantial constitutional question presented by the complaint herein and the request for a three-judge court should be

denied. It is, therefore,

ORDERED, that the request for a three judge court herein be, and it is hereby, denied; and

IT IS FURTHER ORDERED that plaintiff's application for injunctive relief be heard on July 29, 1968, at 9:30 a.m., at Monroe, Louisiana.

Signed at Shreveport, Louisiana, this 18th day of July, 1968.

Ben C. Dawkins, Jr.
Chief Judge, United States
District Court for the
Western District of Louisiana

U. S. DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
FILED
AUG 6 - 1968
ALTON L. CURTIS, CLERK
BY Alton L. Curtis
DEPUTY

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

MONROE DIVISION

*** **** ***

CHARLES F. ZIMMER CIVIL ACTION NO. 13927

VERSUS

JOHN J. McKEITHEN
JACK P. F. GREMILLION
WADE O. MARTIN, JR.
DOUGLAS FOWLER
CAPTAN JACK WYLY
DOROTHY MORGEL
GEORGE F. FOX
MRS. NAOMI ROSENZWEIG
CECIL E. MANNING
JOHN E. BROWN
MISS IDA MAE COBB
JOHN R. HOWARD
BUREN A. BAYLES

*** **** ***

ANSWER OF DEFENDANTS

NOW INTO COURT come all Defendants herein and for answer to the complaint respond, article by article, as follows:

1.

For lack of sufficient information upon which to justify a belief, Article 1 is denied.

2.

For lack of sufficient information upon which to justify a belief, Article 2 is denied.

3.

No response is required.

4.

For lack of sufficient information upon which to justify a belief, Article 4 is denied.

5.

For lack of sufficient information upon which to justiy a belief, Article 5 is denied.

6.

Respondents admit Article 6.

7.

For lack of sufficient information upon which to justify a belief, Article 7 is denied.

8.

Respondents admit Article 8.

9.

Respondents admit Article 9.

10.

Respondents admit Article 10.

11.

Respondents admit Article 11.

12.

Respondents admit Article 12.

13.

Respondents admit Article 13.

14.

Respondents admit Article 14.

15.

For lack of sufficient information upon which to justify a belief, Article 15 is denied.

16.

Respondents admit Article 16.

17.

Respondents admit Article 17.

18.

Respondents admit Article 18.

19.

Respondents admit Article 19.

20.

Respondents admit Article 20.

21.

Respondents admit Article 21.

22.

Respondents admit Article 22.

23.

For lack of sufficient information upon which to justify a belief, Article 23 is denied.

24.

For lack of sufficient information upon which to justify a belief, Article 24 is denied.

25.

For lack of sufficient information upon which to justify a belief, Article 25 is denied.

26.

For lack of sufficient information upon which to justify a belief, Article 26 is denied.

27.

For lack of sufficient information upon which to justify a belief, Article 27 is denied.

28.

Respondents admit Article 28.

29.

For lack of sufficient information upon which to justify a belief, Article 29 is denied.

30.

For lack of sufficient information upon which to justify a belief, Article 30 is denied.

31.

Respondents admit Article 31.

32.

Respondents admit Article 32.

33.

Respondents admit Article 33.

34.

Respondents admit Article 34.

35.

Respondents admit Article 35.

36.

Respondents admit Article 36.

37.

Respondents admit Article 37.

38.

Respondents admit Article 38.

39.

Respondents admit Article 39.

40.

Respondents admit Article 40.

41.

Respondents admit Article 41.

42.

Respondents admit Article 42.

43.

Respondents admit Article 43.

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Respondents admit Article 44.

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Respondents admit Article 45.

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Respondents admit Article 46.

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Respondents admit Article 47.

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Respondents admit Article 48.

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Respondents admit Article 49.

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Respondents admit Article 50.

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Respondents admit Article 51.

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Respondents admit Article 52.

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Respondents admit Article 53.

54.

Respondents admit Article 54.

55.

Respondents admit Article 55.

56.

Respondents admit Article 56.

57.

Respondents admit Article 57.

58.

Respondents admit Article 58.

59.

Respondents admit Article 59.

60.

Respondents admit Article 60.

61.

For lack of sufficient information upon which to justify a belief, Article 61 is denied.

62.

Respondents admit the alleged election is to be held on August 17, 1968, but otherwise deny all other allegations made and contained in Article 62.

63.

For lack of sufficient information upon which to justify a belief, Article 63 is denied.

WHEREFORE, RESPONDENTS PRAY THAT:

1. This Honorable Court refuse to take jurisdiction of this matter;

2. The demands of the Plaintiff be rejected at his costs; and

3. Alternatively, Respondents be given until November 1,

1968, within which to present a plan of reapportionment to this Court consistent with the law, statutes and constitution of the United States of America.

JOHN J. McKEITHEN, JACK P. F. GREMILLION, WADE O. MARTIN, JR., DOUGLAS FOWLER

BY: Jack P. F. Gremillion
ATTORNEY GENERAL

CAPTAN JACK WYLY

DOROTHY MORGEL

GEORGE F. FOX, JR.

MRS. NAOMI ROSENZWEIG

CECIL E. MANNING

JOHN E. BROWN, MISS IDA MAE COBB, JOHN R. HOWARD, BUREN A. BAYLES

BY: William B. Ragland, Jr.
WILLIAM B. RAGLAND, JR.
Assistant District Attorney

U. S. DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
FILED
AUG 6 - 1968
ALTON L. CURTIS, CLERK
BY Alton L. Curtis
DEPUTY

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

MONROE DIVISION

CHARLES F. ZIMMER

VERSUS CIVIL ACTION NO. 13927

JOHN J. McKEITHEN, ET AL

STIPULATION

It is stipulated and agreed that, if the witnesses were sworn and testified in the above entitled and numbered action and the available documentary proof introduced, that the following facts would thereby be established, and the parties hereto agree to the same the evidence of which, except for this agreement, need not be adduced upon the trial, the facts of this case being stipulated to be:

1.

Plaintiff, Charles F. Zimmer, is a citizen and taxpayer of the United States of America and of the State of Louisiana, and he is a resident of the Parish of East Carroll, whose address is Lake Providence, Louisiana, and he is a duly qualified registered voter (Democrat) of Ward 3of the Parish of East Carroll, Louisiana, and he is entitled to vote in primary, general and special elections for members of the police jury and school board in and for the Parish of East Carroll, State of Louisiana.

2.

The defendants are each citizens of the United States of America and of the State of Louisiana. John J. McKeithen is the duly elected and acting governor of the State of Louisiana. Jack P. F. Gremillion is the duly elected and acting attorney general of the State of Louisiana. Wade O. Martin, Jr. is the duly elected and acting secretary of state of the State of Louisiana. Douglas Fowler is the duly elected and acting state custodian of voting machines for the State of Louisiana. Captan Jack Wyly is

the duly elected and acting chairman of the Democratic Executive Committee for the Parish of East Carroll, State of Louisiana. Dorothy Morgel is the duly elected and acting secretary of the Democratic Executive Committee for the Parish of East Carroll, State of Louisiana. George F. Fox is the duly appointed and acting president of the Board of Supervisors of Elections of the Parish of East Carroll, State of Louisiana. Mrs. Naomi Rosenzweig is the duly appointed member of the Board of Supervisors of Elections for the Parish of East Carroll, State of Louisiana. Cecil E. Manning is the duly appointed Registrar of Voters and a member of the Board of Supervisors of Elections of the Parish of East Carroll, State of Louisiana. John E. Brown is the duly elected and acting president of the Police Jury for East Carroll Parish, Louisiana. Miss Ida Mae Cobb is the duly appointed and acting secretary of the Police Jury of East Carroll Parish, Louisiana. John R. Howard is the duly elected and acting president of the School Board of East Carroll Parish, Louisiana. Buren A. Bayles is the duly appointed and acting secretary of the School Board for East Carroll Parish, Louisiana.

3.

The apportionment and reapportionment of parish school boards (those without special legislative authority to reapportion) are strictly dependent upon the apportionment and number of members of the police jury in each parish. The East Carroll Parish School Board does not have the special legislative authority to reapportion itself.

4.

The geographical location of the wards in East Carroll Parish, Louisiana, has not changed for a number or years; however, pursuant to Louisiana R. S. 33:1223, a third police juror was added to Ward 3 in 1967 (the third member was actuallyelected and took office in 1968).

5.

According to the 1960 United States census, the Parish of East Carroll, State of Louisiana, had a total population of 14,433 inhabitants. According to said census, the population of the seven wards of East Carroll Parish, Louisiana, together with the present number of registered voters in the seven wards of East Carroll Parish, and together with the number of police jurors and school board members representing each ward, is as follows;

WARD	NUMBER OF POLICE JURORS AND SCHOOL BOARD MEMBERS	POPULATION PER JUROR OR SCHOOL BOARD MEMBER	REGISTERED VOTERS PER JUROR OR SCHOOL BOARD MEMBER
1	1	1,399	443
2	1	2,050	706
3	3 (only 2 school board members)	2,617 per police juror	1,292 per police juror
		3,925 per school board member	1,939 per school board member
4	1	395	86
5	1	983	345
6	1	720	250
7	1	1,035	281

6.

The East Carroll Parish School Board and the East Carroll Parish Police Jury have general governmental powers over the entire geographical area of East Carroll Parish.

7.

The East Carroll Parish Democratic Executive Committee met on the 17th day of June, 1968, and issued a call for an election for nominees to the school board in Wards 1, 5 and 6 of East Carroll Parish, Louisiana, and for an election for a nominee from Ward 7 to the police jury of East Carroll Parish, Louisiana, said primary election to be held on August 17, 1968.

8.

Democratic party nominations have been, in the past, tantamount to elections in East Carroll Parish, Louisiana. Over

ninety (90%) per cent of the registered voters in East Carroll Parish, Louisiana, are registered as Democrats. There have been no primary elections called to select nominees of any other political party for the general election to the school board and police jury in 1968, nor have there been any nominations for these positions by any other political party for the general election of 1968.

Thus entered into and signed at Monroe, Louisiana, this 1st day of August, 1968, by the undersigned attorneys for plaintiff and defendants.

McINTOSH, HESTER & GILFOIL
P. O. BOX 468
LAKE PROVIDENCE, LOUISIANA 71254
ATTORNEYS FOR PLAINTIFF

BY: Mason P. Gilfoil
Mason P. Gilfoil

THOMPSON L. CLARKE
ST. JOSEPH, LOUISIANA
ATTORNEY FOR DEFENDANTS

BY: Thompson L. Clarke
Thompson L. Clarke

8/6/68
Stipulation approved -
Ben C. Dawkins, Jr.
Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

FILED Aug 6-1968
By: [illegible]

CHARLES F. ZIMMER

vs. No. 13,927

JOHN J. MC KEITHEN, ET AL.

Transcript of proceedings in the above-entitled action, before the Honorable Ben C. Dawkins, Jr., United States District Judge, at Monroe, Louisiana, on August 6, 1968.

APPEARANCES:

Messrs:
MASON P. GILFOIL, Attorney for Plaintiffs.

WILLIAM B. RAGLAND, JR., Attorney for Defendants.

THE COURT: Do both sides announce ready?

MR. GILFOIL: The plaintiff is ready.

MR. RAGLAND: The defendants are ready.

THE COURT: Mr. Gilfoil, I believe you have a stipulation you want to offer in evidence.

MR. GILFOIL: Yes, sir. I would like to offer the stipulation in evidence.

THE COURT: Is there any opposition to the filing of this?

MR. RAGLAND: Your Honor, there is no opposition. We previously agreed.

THE COURT: On the facts as outlined in the stipulation and under the holding of the Supreme Court in the one man, one vote proposition, the Court has approved the stipulation on the undisputed facts as set forth therein.

MR. GILFOIL: As I understood it at our conference in chambers, your Honor intended to enjoin the upcoming election for police jurors and school board members on August 17, 1968.

THE COURT: The injunction will be against that election being held and the members of the police jury and school board will run at large from the entire parish.

MR. GILFOIL: As I understood it, your Honor, the Court was going to give the police jury until October 1, 1968 to come forth with a plan of reapportionment.

THE COURT: Correct.

MR. GILFOIL: And the attorney for the plaintiff was to submit a proposed decree within ten days enjoining the upcoming elections on August 17, 1968 and require the police jury to reapportion by October 1, 1968, under penalty of contempt.

THE COURT: Correct.

MR. GILFOIL: And that the elections under the plan approved will be held at the time of the general election on November 4, 1968; is that correct?

THE COURT: That is correct.

MR. RAGLAND: As to the census that we propose to take, the Court has no objection to the census if it is true and correct.

THE COURT: That is correct.

MR. RAGLAND: We wouldn't want to present a plan on an updated census of 1960.

THE COURT: That is too long ago. It will have to be updated as close as possible under the present circumstances.

MR. RAGLAND: On the matter of our office holders over there, our police jurors and school board members, your decree is saying that once the plan is accepted by the Court and ordered to be implemented, that at the general election in November you will order all the

office holders run anew and fill these newly vacated areas.

THE COURT: That is correct.

Is there anything else, gentlemen?

MR. GILFOIL: No, sir.

THE COURT: Court is adjourned.

C E R T I F I C A T E

I, SIDNEY YOUNG, Official Reporter, United States District Court, Western District of Louisiana, do hereby certify that the above and foregoing four pages of typewritten matter contain a true and correct reporting and transcription of the proceedings had at the time and place as hereinbefore set out on Page 1 hereof.

IN WITNESS WHEREOF I have hereunto affixed my signature at Shreveport, Louisiana, on this the 6th day of August, 1968.

SIDNEY YOUNG

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

LOUISIANA
Aug 12-1968
ALBERT D. LEE, CLERK
By:

CHARLES F. ZIMMER

VERSUS CIVIL ACTION NO. 13927

JOHN J. McKEITHEN, ET AL

ORDER GRANTING INJUNCTION, ETC.

This action came on the 6th day of August, 1968, to be heard on plaintiff's application for injunctive relief, after due notice had been given to all defendants herein. By agreement of counsel, it was ordered by the Court that the trial of the action on its merits be advanced and consolidated with the hearing on plaintiff's application for injunctive relief. Counsel for plaintiff and defendants filed a stipulation herein, which stipulation was approved by the Court and ~~the~~ made its finding of facts.

FINDING OF FACTS

Plaintiff, Charles F. Zimmer, is a citizen and taxpayer of the United States of America and of the State of Louisiana, and he is a resident of the Parish of East Carroll, whose address is Lake Providence, Louisiana, and he is a duly qualified registered voter (Democrat) of Ward 3 of the Parish of East Carroll, Louisiana, and he is entitled to vote in primary, general and special elections for members of the police jury and school board in and for the Parish of East Carroll, State of Louisiana.

The defendants are each citizens of the United States of America and of the State of Louisiana. John J. McKeithen is the duly elected and acting governor of the State of Louisiana. Jack P. Gremillion is the duly elected and acting attorney general of the State of Louisiana. Wade O. Martin, Jr., is the duly elected and acting secretary of state of the State of Louisiana. Douglas Fowler is the duly elected and acting state custodian of voting machines for the State of Louisiana. Captan Jack Wyly is

the duly elected and acting chairman of the Democratic Executive Committee for the Parish of East Carroll, State of Louisiana. Dorothy Morgel is the duly elected and acting secretary of the Democratic Executive Committee for the Parish of East Carroll, State of Louisiana. George F. Fox is the duly appointed and acting president of the Board of Supervisors of Elections of the Parish of East Carroll, State of Louisiana. Mrs. Naomi Rosenzweig is the duly appointed member of the Board of Supervisors of Elections for the Parish of East Carroll, State of Louisiana. Cecil E. Manning is the duly appointed Registrar of Voters and a member of the Board of Supervisors of Elections of the Parish of East Carroll , State of Louisiana. John E. Brown is the duly elected and acting president of the Police Jury for East Carroll Parish, Louisiana. Miss Ida Mae Cobb is the duly appointed and acting secretary of the Police Jury of East Carroll Parish, Louisiana. John R. Howard is the duly elected and acting president of the School Board of East Carroll Parish, Louisiana. Buren A. Bayles is the duly appointed and acting secretary of the School Board for East Carroll Parish, Louisiana.

The apportionment and reapportionment of parish school boards (those without special legislative authority to reapportion) are strictly dependent upon the apportionment and number of members of the police jury in each parish. The East Carroll Parish School Board does not have the special legislative authority to reapportion itself.

The geographical location of the wards in East Carroll Parish, Louisiana, has not changed for a number of years; however, pursuant to Louisiana R.S. 33:1223, a third police juror was added to Ward 3 in 1967 (the third member was actually elected and took office in 1968).

According to the 1960 United States census, the Parish of East Carroll, State of Louisiana, had a total population of 14,433 inhabitants. According to said census, the population of the seven wards of East Carroll Parish, Louisiana, together with

the present number of registered voters in the seven wards of East Carroll Parish, and together with the number of police jurors and school board members representing each ward, is as follows:

WARD	NUMBER OF POLICE JURORS AND SCHOOL BOARD MEMBERS	POPULATION PER JUROR OR SCHOOL BOARD MEMBER	REGISTERED VOTERS PER JUROR OR SCHOOL BOARD MEMBER
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3	3 (only 2 school board members)	2,617 per police juror	1,292 per police juror
		3,925 per school board member	1,939 per school board member
4	1	395	86
5	1	983	345
6	1	720	250
7	1	1,035	281

The East Carroll Parish School Board and the East Carroll Parish Police Jury have general governmental powers over the entire geographical area of East Carroll Parish.

The East Carroll Parish Democratic Executive Committee met on the 17th day of June, 1968, and issued a call for an election for nominees to the school board in Wards 1, 5 and 6 of East Carroll Parish, Louisiana, and for an election for a nominee from Ward 7 to the police jury of East Carroll Parish, Louisiana, said primary election to be held on August 17, 1968.

Democratic party nominations have been, in the past, tantamount to elections in East Carroll Parish, Louisiana. Over ninety (90%) per cent of the registered voters in East Carroll Parish, Louisiana, are registered as Democrats. There have been no primary elections called to select nominees of any other political party for the general election to the school board and police jury in 1968, nor have there been any nominations for these positions by any other political party for the general election of 1968.

CONCLUSION OF LAW

The Supreme Court of the United States, in Avery versus Midland County, Texas (Apr., 1968) _____US _____, 88 Sup. Ct. 1114, _____L.Ed.2d, said:

> "When the State apportions its legislature, it must have due regard for the Equal Protection Clause. Similarly, when the State delegates lawmaking power to local government and provides for the election of local officials from districts specified by statute, ordinance, or local charter, it must insure that those qualified to vote have the right to an equally effective voice in the election process. If voters residing in oversize districts are denied their constitutional right to participate in the election of state legislators, precisely the same kind of deprivation occurs when the members of a city council, school board, or county governing board are elected from districts of substantially unequal population. If the five senators representing a city in the state legislature may not be elected from districts ranging in size from 50,000 to 500,000, neither is it permissible to elect the members of the city council from those same districts. In either case, the votes of some residents have greater weight than those of others; in both cases the equal protections of the law have been denied." (Page 1118, emphasis supplied).

It is apparent in this case that plaintiff, and others similarly situated, have therefore, been denied the equal protection of the laws in both the election of police jurors and members of the school board in East Carroll Parish, Louisiana. Equally apparent is the fact that they would continue to be denied equal protection of the laws if the proposed elections were permitted to be held.

ORDER

IT IS THEREFORE ORDERED that:

John J. McKeithen, Governor of the State of Louisiana,
Jack P. F. Gremillion, Attorney General of the State of Louisiana,
Wade O. Martin, Jr., Secretary of State of the State of Louisiana,
Douglas Fowler, State Custodian of Voting Machines for the State of Louisiana,
Captan Jack Wyly, Chairman of the Democratic Executive Committee for the Parish of East Carroll, State of Louisiana,
Dorothy Morgel, Secretary of the Democratic Executive Committee for the Parish of East Carroll, State of Louisiana,

George F. Fox, President of the Board of Supervisors of Elections of the Parish of East Carroll, State of Louisiana,
Mrs. Naomi Rosenzweig, Member of the Board of Supervisors of Elections for the Parish of East Carroll, State of Louisiana,
Cecil E. Manning, Registrar of Voters and a member of the Board of Supervisors of Elections of the Parish of East Carroll, State of Louisiana,
John E. Brown, President of the Police Jury for East Carroll Parish, Louisiana,
Ida Mae Cobb, Secretary of the Police Jury of East Carroll Parish, Louisiana,
John R. Howard, President of the School Board of East Carroll Parish, Louisiana,
Buren A. Bayles, Secretary of the School Board of East Carroll Parish, Louisiana,

and each of them, their officers, agents, servants, employees and attorneys, and those persons in active concert or participation with them, who receive actual notice of this order by personal service or otherwise, be enjoined, restrained and prohibited, in any and every way, from conducting a primary election for a member of the police jury of the Parish of East Carroll from the Seventh Ward thereof on August 17, 1968, and for members of the East Carroll Parish School Board from Wards 1 and 6 of East Carroll Parish on August 17, 1968, and it is further ordered that said parties are to remain so enjoined, restrained, and prohibited pending the further order of this Court.

IT IS FURTHER ORDERED that the East Carroll Parish Police Jury prepare and submit to this Court on or before October 1, 1968, a constitutionally satisfactory plan for the reapportionment of the Police Jury and School Board of East Carroll Parish in accordance with the "one-man, one-vote" rule announced in Avery vs. Midland County, Texas, Supra, and other related cases.

IT IS FURTHER ORDERED that all police jurors and all members of the School Board of East Carroll Parish be elected pursuant to a constitutionally satisfactory plan approved by this Court at the general election to be held in November, 1968, or as soon thereafter as is compatible with the laws of Louisiana relating to primary and general elections.

Signed at Shreveport, Louisiana, this 12th day of August, 1968.

Approved as to form:

William B. Ragland, Jr.,
Attorney for Defendants.

Ben C. Dawkins, Jr., Chief Judge,
United States District Court for
the Western District of Louisiana

Town of Lake Providence

LAKE PROVIDENCE, LOUISIANA 71254

FORD LAND, Mayor
GEORGE F. FOX, City Attorney
J. V. MAGGIO, Clerk

Aldermen:
P. G. MARRON
KIRBY TYRONE
HOWARD WHITE
HYLAND NELSON
F. E. FORTENBERRY

October 17, 1968

Honorable Ben C. Dawkins, Jr.
United States District Judge
United States Post Office Building
Shreveport, Louisiana

Dear Judge Dawkins:

I am writing today in regard to the reapportionment suit which has been filed concerning East Carroll Parish, Louisiana.

As Mayor of the only incorporated municipality in the Parish, I am concerned not only with the Police Jury and School Board being reapportioned in such a way as to give fair and equal representation to all citizens, but I am also interested in seeing that the Town of Lake Providence, which contains more than one-half the Parish population, has a fair representation on both these public Boards.

At this time, there are many people with many different ideas concerning reapportionment, and the public bodies in question may or may not be able to agree on a proposed plan before their next Court hearing. Whether they do or do not, I would like, as Mayor, to give you my thoughts on this subject, and to state that if the Town needs someone to speak on behalf of its position, I would be happy to appear and testify at any time.

Certain facts are clear, and some of these are as follows:

1) The Parish population is steadily declining. The 1940 census showed a Parish population of 19,023; the 1960 census showed 14,433; and the present population, based on a recent survey, is 12,388.

2) More than one-half the Parish population lives within the Town of Lake Providence. The recent survey showed 12,388 persons in the Parish, with 6,255 living in Town, or 50.2% of the population. The Town recently annexed an additional area, containing approximately 300 people, and the Town population now is 6,525 or 52.6% of the Parish population.

The Town had nothing to do with the bringing of the reapportionment suit, but now that it has been filed, it is clear to everyone who was not aware of it before, that the present Wards do not provide equal representation for the people of the Parish. The problem now is how to do so.

I am strongly in favor of geographical representation on both the Police Jury and School Board. This is historically the way these posts have been filled, and with good reason. A person should represent a certain area of the Parish where he lives, and where he personally knows the people and their problems and wishes, and where the people know him. The Police Jury members and School Board members should be elected from Wards, where they live, and only those persons living in that Ward should vote on their selection. It is not fair to ask a person running for these offices to campaign Parish wide. It would be too great a physical and financial undertaking for the average person. The very nature of the job, the salary which is paid, and the responsibility of the office, calls for this type selection.

With these thoughts in mind, I make the following recommendations:

1) That the Parish be redistricted to provide fair and equal representation for all persons and for all Wards;

2) The number of Wards to be reduced from 7 to 6, with one Police Juror and one School Board member to be elected from each Ward. This would mean a reduction in number from 9 to 6, on each Board, which would be in line with the drop in Parish population, and would provide for more efficient operation of both Boards. The more members, the more difficult it is for any Board or body to function harmoniously;

3) Have three Wards inside the Town of Lake Providence, which has 52.6% of the total Parish population, and three Wards outside the corporate limits of the Town.

Many people have stated that it is impossible to fairly and equally redistrict the Parish. I think this is a ridiculous statement, made by persons who do not want the Wards redrawn. Certainly, within certain accepted tolerances, the Parish could be divided into 6 wards, each containing approximately 2,064 people (1/6 of the total Parish population of 12,388).

It may be, for a variety of reasons, that neither the Police Jury or School Board will be able to agree on an acceptable plan of reapportionment which is based on redrawing the present ward lines, but this willnot be because it cannot be done.

As an alternative, and in the event this Court agrees with those who insist on at-large elections, then I still vigorously recommend a reduction in number from 9 to 6, with three members to be elected from inside the Town, and three from outside the Town. This would mean that three of the members of both bodies have to live inside the Town, and three would live outside the Town, although they would be voted on by everyone living within the Parish.

Respectfully,

Ford Land =Mayor=
Town of Lake Providence, La.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

CHARLES F. ZIMMER

VERSUS CIVIL ACTION NO. 13927

JOHN J. McKEITHEN, ET AL

DECREE PROVIDING FOR THE REAPPORTIONMENT OF POLICE JURORS AND SCHOOL BOARD MEMBERS IN EAST CARROLL PARISH, LOUISIANA, ETC.

By the order of this Court, dated August 12, 1968, the East Carroll Police Jury was required to submit to this Court a constitutionally satisfactory plan for the reapportionment of the Police Jury and School Board of East Carroll Parish in accordance with the "one-man, One-vote" rule announced in Avery vs. Midland County, Texas, (Sup. Ct., April, 1968) 88 S.Ct. 1114, and other related cases. The East Carroll Parish Police Jury has submitted a plan, concurred in by the East Carroll Parish School Board and the plaintiff herein.

IT IS THEREFORE ORDERED, that East Carroll Parish, Louisiana, be subdivided into seven wards, each of which shall conform to the same geographical boundaries and areas as the existing wards; each newly created ward shall be numbered as the existing ward which it replaces; that one (1) Police Juror and one (1) School Board member shall be elected from each of the newly created wards numbered 1, 2, 4, 5, 6, and 7, and three (3) Police Jurors and three (3) School Board members from the newly created Ward Three (3), all Police Jurors and School Board members to be elected at large throughout East Carroll Parish, Louisiana; and that the newly created Police Jury offices and School Board offices be filled as the terms of the present office holders expire, according to and in the manner prescribed by the Louisiana election laws applicable thereto.

IT IS FURTHER ORDERED, that a call for an election for nominees to the School Board from Wards 1, 3 (one member only), 5, and 6 of East Carroll Parish, Louisiana, and for an election for a nominee from Ward 7 to the Police Jury of East Carroll Parish, Louisiana, be issued as soon as practicable and in accordance with the Louisiana election laws applicable thereto, and that a general election ensue, all in accordance with this order and, insofar as practicable, the general election laws of Louisiana.

IT IS FURTHER ORDERED, that all or any part, of any order previously issued herein which is in conflict herewith is hereby revoked and rescinded.

IT IS FURTHER ORDERED, that it is not the purpose or intent of this Court in this order to restrict the right of the East Carroll Parish School Board to reapportion itself in accordance with Louisiana R.S. 17:71.1, et seq.

IT IS FURTHER ORDERED, that all costs herein be taxed against the East Carroll Parish Police Jury.

Signed at Shreveport, Louisiana, this 2nd day of December, 1968.

Approved as to form:

William B. Ragland, Jr.,
Attorney for Defendants.

Mason P. Gilfoil,
Attorney for Plaintiff.

Ben C. Dawkins, Jr., Chief Judge,
United States District Court for
the Western District of Louisiana.

13 orig. marked
attached Cert. Copies
of Decree.
Mailed 12/3/68
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

CHARLES F. ZIMMER

VERSUS CIVIL ACTION NO. 13927

JOHN J. McKEITHEN, ET AL

APPLICATION TO TAX COSTS

Plaintiff, Charles F. Zimmer, pursuant to Rule 54-D of the Federal Rules of Civil Procedure and pursuant to the decree of this Court signed on the 2nd day of December, 1968, moves that the Clerk of this Court do tax as costs against the defendant East Carroll Parish Police Jury those costs set out in the attached memorandum of costs.

McINTOSH, HESTER & GILFOIL,
P. O. Drawer 71,
Lake Providence, Louisiana,
Attorneys for Plaintiff,

BY: Mason P. Gilfoil

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

CHARLES F. ZIMMER

VERSUS CIVIL ACTION NO. 13927

JOHN J. McKEITHEN, ET AL

MEMORANDUM OF COSTS

I, Mason P. Gilfoil, attorney for the plaintiff in the above described and entitled action, do hereby certify that the items of cost set out below are correct and that these costs have been necessarily incurred:

Advance Filing Fee in U. S. District Court Statement dated July 12, 1968 - - - - - - - -	$15.00
Services of United States Marshall Statement dated July 16, 1968 - - - - - - -	$63.52
Services of United States Marshall Statement dated August 13, 1968 - - - - - -	$61.60
Services of United States Marshall Statement dated December 4, 1968 - - - - -	$79.54
Total -	$ 219.66

McINTOSH, HESTER & GILFOIL,
P. O. Drawer 71,
Lake Providence, Louisiana,
Attorneys for Plaintiff.

BY: Mason P. Gilfoil
Mason P. Gilfoil

The Banner-Democrat
LAKE PROVIDENCE, LA
71254

LAKE PROVIDENCE NOV 22 1968 71254

Mr. Alton R Curtis,, Clerk
Box 106
Shreveport, La.

71102

MEMBERS

WATSON SANDERS, Ward 1
J. C. DONOVAN, Ward 2
L. L. MINSKY, Ward 3
ERNIE L. WILSON, Ward 3
OTIS VIRGIL, Ward 3
EARL OSWALT, Ward 4
J. E. BROWN, Ward 5
L. B. SULLIVAN, Ward 6
JERRY WALLEY, Ward 7

POLICE JURY
OF
EAST CARROLL PARISH
LAKE PROVIDENCE, LA. 71254

PRESIDENT
J. E. Brown

SECRETARY-TREASURER
Miss Ida May Cobb

ASSISTANT SECRETARY
Mrs. Vivian A. Rodge

CHAIRMAN, FINANCE COMMITTEE
Earl Oswalt

PRESIDENT, BOARD OF GOVERNORS OF PRISON FARM
L. B. Sullivan

SUPERINTENDENT, PRISON FARM
Ray Fortenberry

ROAD and DRAINAGE FOREMAN
Walter J. Bishop

November 25, 1968

CIV 13927

Honorable Ben C. Dawkins, Judge
United States District Court for the Western District of Louisiana,
Shreveport, Louisiana

Dear Judge Dawkins:

In re: East Carroll Parish Reapportionment Plan

In accordance with the order of Court, a resolution was adopted by East Carroll Parish Police Jury on November 18, 1968, setting forth a plan of reapportionment for East Carroll Parish, Louisiana, which the Police Jury asks you to incorporate in your forthcoming judgment on this matter.

I ask you to pay particular attention to the request of the jury that all present office holders be permitted to serve out their present terms before their successors are elected under the new plan. This request was unanimous and expresses the wishes of our people in general. Please, therefore, incorporate Paragraph 4 of the Resolution in your final judgment so as to implement the wishes of the Police Jury in that regard.

If we are to perform any further work in connection with this matter, please so inform us.

With best wishes, we remain

Very truly yours,

East Carroll Parish Police Jury

By J. E. Brown
J. E. Brown, President

U. S. DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
FILED
DEC 27 1968
ALTON L. CURTIS, CLERK
By Deputy

JEB:C
Encl: 1

CIV 13927

RESOLUTION

BE IT RESOLVED in special session at Lake Providence, Louisiana, on November 18, 1968, in accordance with the order of the United States District Court for the Western District of Louisiana, dated August 12, 1968, supplemented by order dated September 12, 1968, that East Carroll Parish Police Jury be reapportioned according to the following plan:

1. East Carroll Parish, Louisiana, be subdivided into seven (7) wards, each of which shall contain the same geographical boundaries and areas as the existing ward which it replaces;

2. Each newly created ward be numbered and bear the same number as the existing ward which it replaces;

3. One police juror be elected from each of the newly created wards numbered 1, 2, 4, 5, 6 and 7, and three jurors from newly created Ward 3, all to be elected at large throughout East Carroll Parish, Louisiana;

4. The newly created Police Jury offices be filled as the terms of the present office holders expire according to and in the manner prescribed by the Louisiana Election Laws applicable thereto.

U. S. DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
FILED
DEC 27 1968
ALTON L. CURTIS, CLERK
By Deputy

CERTIFICATE

STATE OF LOUISIANA
PARISH OF EAST CARROLL

I, Ida May Cobb, Secretary-Treasurer of the East Carroll Parish Police Jury, do hereby certify that the above and foregoing is a full, true and correct copy of a resolution adopted by the East Carroll Parish Police Jury, in special session convened, on November 18, 1968.

THIS DONE AND SIGNED at Lake Providence, Louisiana, on this November 19, 1968.

Ida May Cobb
(Miss) Ida May Cobb, Secretary-Treasurer,
East Carroll Parish Police Jury

AUG 7 1970

CIV 13927

Mr. John H. Brown
President, East Carroll Parish
Police Jury
Lake Providence, Louisiana

Dear Mr. Brown:

It has come to my attention that primary elections are planned in East Carroll Parish on August 11 and that members of the school board will be elected by at-large voting. I understand that this change was adopted after a reapportionment suit, [illegible]. (W.D. La. No. 13,477), was filed seeking the purge and that the new election procedures were based on a resolution adopted by the East Carroll Parish Police Jury in Special Session on November 18, 1968, and upon the District Court's Order of December 2, 1968. The Ordinance was passed pursuant to Act 615 of the 1968 Regular Session of the Louisiana Legislature (Title 33, Section 1224 of the Louisiana Revised Statutes).

It appears that at the time the East Carroll reapportionment case was decided the enabling legislation, Act 443, had not been submitted to the Attorney General as is required by Section 5 of the Voting Rights Act of 1965 (42 U.S.C. 1973c). Subsequently, when this Act, as well as Act 581, was

cc: Hon. Ben C. Dawkins ✓

submitted to the Attorney General he interposed objections to their implementation. Under Section 5, laws changing voting procedures are inoperable until they are either submitted to the Attorney General or a declaratory judgment concerning their purpose and effect is obtained from the District of Columbia Court. Also, where the new procedures are submitted to the Attorney General and he interposes an objection to the law, the statute cannot be implemented.

As a consequence of the Attorney General's objections and the operation of provisions of Section 5 of the Voting Rights Act, it appears that the East Carroll Police Jury did not have the power to make the changes which were incorporated in its ordinance. In view of this, I believe that East Carroll Parish cannot now conduct at-large elections for school board or police jury members without violating federal law. You may wish to note that in a similar case where local officials acted pursuant to a state enabling statute which was objected to by the Attorney General, the District Court for the Middle District of Mississippi ruled that the County Board of Supervisors had no power to act as they did. Dyer v. Love, 307 F. Supp. 974 (1969).

Please advise me of the action the East Carroll Parish Police Jury plans to take in order to remedy the problems I have discussed. I, personally, and my staff are available to give you any assistance that may be needed in this matter. Please feel free to call upon us.

Sincerely,

JERRIS LEONARD
Assistant Attorney General
Civil Rights Division

cc: Hon. Ben C. Dawkins, Jr.
Mr. Troy B. Dukes
Mr. Captan Jack Wyly

BEST COPY AVAILABLE

OFFICE OF

THE DISTRICT ATTORNEY

SIXTH JUDICIAL DISTRICT

EAST CARROLL · MADISON AND TENSAS PARISHES

THOMPSON L. CLARKE
DISTRICT ATTORNEY
ST. JOSEPH, LOUISIANA
OFFICE PHONE 9336

WILLIAM B. RAGLAND, JR.
ASSISTANT DISTRICT ATTORNEY
LAKE PROVIDENCE, LOUISIANA
OFFICE PHONE 822

March 11, 1971

C W 3427

U. S. DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
FILED
MAR 12 1971
ALTON L. CURTIS, CLERK
By _____ Deputy

Honorable Judge Ben C. Dawkins, Jr.
United States District Court
Federal Building
Shreveport, Louisiana

Dear Judge Dawkins:

In accordance with your letter of February 17, requesting East Carroll Parish School Board and East Carroll Parish Police Jury to submit their plans of reapportionment by March 17, 1971, I am pleased to enclose to you herewith a certified copy of the resolutions adopted by each governing authority which, you will observe, adopt the same plan of reapportionment under which these bodies have been acting since December 2, 1968, when you rendered a reapportionment order affecting these two governmental units. The legal basis of these plans is your order of December 2, 1968 and the approval of these plans by a substantial majority of the members of both governing authorities.

Copies of these resolutions have been mailed to plaintiff's counsel who, we understand, will have 15 days within which to file oppositions thereto.

With best wishes, I am

Yours very truly,

William B. Ragland, Jr.
Assistant District Attorney

WBRjr/hh
Enclosure

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

U. S. DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
FILED
MAR 12 1971
ALTON L. CURTIS, CLERK
By _____ Deputy

RESOLUTION

Pursuant to the request of Honorable Ben C. Dawkins, Jr., Chief Judge, United States District Court, Western District of Louisiana, in his letter of February 17, 1971, requesting a plan of reapportionment from East Carroll Parish, Louisiana, in light of the 1970 official census, the East Carroll Parish Police Jury upon a motion by Mr. Donovan, seconded by Mr. Minsky, and carried, hereby proposes the following plan for the East Carroll Parish Police Jury:

1. One Police Jury member be elected from Wards numbered 1, 2, 4, 5, 6 and 7, and three Police Jury members from Ward 3, all to be elected at large throughout East Carroll Parish, Louisiana; and,
2. The Police Jury offices be filled as the terms of the present office holders expire according to and in the manner prescribed by the Louisiana Election Laws applicable thereto.

AYES:	NAYS:	ABSTAINING:
J. C. Donovan	Watson Sanders	Ernie Wilson
L. L. Minsky		
Otis Virgil, Sr.		
Earl Oswalt		
Jerry Walley		
L. B. Sullivan		

U. S. DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
FILED
MAR 2 1971
ALTON L. CURTIS, CLERK
By _____
Deputy

RESOLUTION

Pursuant to the request of Honorable Ben C. Dawkins, Jr., Chief Judge, United States District Court, Western District of Louisiana, in his letter of February 17, 1971, requesting a plan of reapportionment from East Carroll Parish, Louisiana, in light of the 1970 official census, the East Carroll Parish School Board upon a motion by Mr. Clement, seconded by Mr. Noland, and carried, hereby proposes the following plan for the East Carroll Parish School Board:

1) One School Board member be elected from Wards numbered 1, 2, 4, 5, 6 and 7, and three School Board members from Ward 3, all to be elected at large throughout East Carroll Parish, Louisiana; and,

2) The School Board offices be filled as the terms of the present office holders expire according to and in the manner prescribed by the Louisiana Election Laws applicable thereto.

AYES:	NAYS:
JACK BROWN	JOSEPH ATLAS
LLOYD CLEMENT	
HUGO MORARA	
LUCIAN NOLAND	
BUFORD PERRY	
THOMAS E. RAGLAND	
E. H. WHITE	

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

CHARLES F. ZIMMER,
Plaintiff,
v.
JOHN J. McKEITHER, et al.,
Defendants.

CIVIL ACTION
NO. 13927

MOTION FOR LEAVE TO INTERVENE

Pursuant to Rule 24 of the Federal Rules of Civil Procedure, Stewart Marshall who is a black registered voter of East Carroll Parish moves the Court to intervene as a plaintiff herein on the grounds that the present plaintiff herein does not fairly and adequately protect the interests of the class of registered voters of East Carroll and more particularly does not adequately represent the black registered voters of that parish, and moves for an order permitting the filing of the attached complaint in intervention.

Respectfully submitted,

STANLEY A. HALPIN, JR.
GEORGE M. STRICKLER, JR.
DEBRA A. MILLENSON
606 Common Street - Suite 405
New Orleans, Louisiana 70130
523-1797

By: Stanley A. Halpin Jr.

Dated: May 6, 1971

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

U.S. DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
FILED
MAY 11 1971
ALTON L. CURTIS, CLERK
By _____ Deputy

CHARLES F. ZIMMER,
Plaintiff,
v.
JOHN J. McKEITHEN, et al.,
Defendants.

CIVIL ACTION
NO. 13927

O R D E R

This cause coming on to be heard on the motion of Stewart Marshall for leave to intervene as a party plaintiff, and the Court having considered said motion and the complaint tendered therewith, and it appearing to the Court that said mover should be permitted to intervene as prayed and the Court being duly advised of the premises,

IT IS ORDERED, that Stewart Marshall has leave to intervene in this cause, and is hereby made a party to this cause, and to that end may file instanter a complaint in this cause in the same manner and with like effect as if named an original party to this cause.

THUS DONE and SIGNED in Shreveport, Louisiana, this 10th day of May, 1971.

Ben C. Dawkins
UNITED STATES DISTRICT JUDGE

U.S. DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
FILED
MAY 11 1971
ALTON L. CURTIS, CLERK
By _____ Deputy

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

CHARLES F. ZIMMER,
Plaintiff,
v.
JOHN J. McKEITHEN, et al.,
Defendants.

CIVIL ACTION
NO. 13927

COMPLAINT IN INTERVENTION

I. JURISDICTION

1. This action is brought pursuant to 42 U.S.C. 1983. Plaintiff-intervenor seeks a declaratory judgment, pursuant to 28 U.S.C. 2201, that the present "at-large" scheme of apportionment of the East Carroll Parish Police Jury and the East Carroll School Board is violative of his rights and the rights of all others similarly situated under the Fourteenth Amendment of the United States Constitution, and is violative of state law as modified by action of the Attorney General of the United States under Section 5 of the Voting Rights Act, 42 U.S.C. 1971, et seq. and an order requiring new elections for the two bodies to be held on the basis of lawfully apportioned districts. Jurisdiction is conferred on this Court by 28 U.S.C. 1343(3).

II. PARTIES

2. Plaintiff-intervenor Stewart Marshall is a black citizen of the United States and resident of East Carroll Parish Louisiana. Plaintiff-intervenor is registered to vote.

3. Plaintiff-intervenor sues individually and as representative of the class of voters residing in East Carroll Parish and of the sub-class of black voters residing in that parish pursuant to Rule 23 of the federal Rules of Civil Procedure. The class and sub-class are so numerous that all its members cannot be joined herein. There are common questions of law and fact applicable to the classes; the claims of plaintiff-intervenor are typical of the claims of the classes; and the named plaintiff-intervenor will fairly and adequately protect the members of the classes. The defendants have acted (or failed to act) on grounds generally applicable to the classes, making appropriate final injunctive relief and corresponding declaratory relief with respect to the classes as a whole.

4. This action is brought against the following named defendants in their official capacities as officers of the State:

(a) The defendant, John J. McKeithen, is the duly elected Governor of the State of Louisiana.

(b) The defendant, Jack P. F. Gremillion, is the duly elected Attorney General of the State of Louisiana.

(c) The defendant, Wade O. Martin, Jr., is the duly elected Secretary of State of the State of Louisiana.

(d) The defendant, Douglas Fowler, is the duly elected State Custodian of Voting Machines of the State of Louisiana.

5. This action is also brought against the following named defendants in their individual and official capacities:

(a) Defendant, Captain Jack Wyly is the duly elected Chairman of the Democratic Executive Committee for the Parish of East Carroll, State of Louisiana.

(b) Defendant, Dorothy Morgel is the duly elected Secretary of the said Democratic Executive Committee for the Parish of East Carroll, State of Louisiana.

(c) Defendant, George F. Fox is the duly appointed President of the Board of Supervisors of Elections of the Parish of East Carroll, State of Louisiana.

(d) Defendant, Mrs. Naomi Rosezweig is a duly appointed Member of the Board of Supervisors of Elections of the Parish of East Carroll, State of Louisiana.

(e) Defendant, Cecil E. Manning is the duly appointed Registrar of Voters and member of the Board of Supervisors of Elections of the Parish of East Carroll, State of Louisiana.

6. This action is also brought against the following named defendants in their individual and official capacities as representatives of the East Carroll Police Jury and School Board.

(a) Defendant, John E. Brown is the duly elected President of the Police Jury for East Carroll Parish, Louisiana.

(b) Defendant, Miss Ida Mae Cobb is the duly appointed Secretary of the Police Jury of East Carroll Parish, Louisiana.

(c) Defendant, John R. Howard is the duly elected President of the School Board for East Carroll Parish, Louisiana.

(d) Defendant, Buren A. Bayles is the duly appointed Secretary of the School Board for East Carroll Parish, Louisiana.

III. STATEMENT

7. Upon order of this Court dated August 12, 1968, the East Carroll Parish Police Jury submitted a plan reapportioning itself and the School Board by dividing the parish into seven (7) wards, one member of each body to reside in each of six wards and three members of each body to reside in the remaining Ward 3. Elections for these positions, however, were to be at-large or parish-wide. This apportionment plan was approved by this Court by decree of December 2, 1968.

8. Louisiana Acts of 1968 No. 445 § 1 amending L.S.A. - R.S 33:1221, and Act of 1968 No. 561 § 1 adding L.S.A. - R.S. 17:71.1-71.6 amended Louisiana law to allow at-large elections for police juries and school boards. On April 29, 1969, Nos. 445 and 561 of the Acts of 1968 were submitted to the Attorney General of the United States pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c. On June 26, 1969 both acts were rejected as having "the effect of discriminating against Negro voters on account of their race, and of denying to them an effective voice in the selection of Police Jury and School Board members." This rejection was reaffirmed by the Attorney General on September 10, 1969.

The nine member apportionment scheme of the East Carroll Parish Police Jury and the eight member scheme of the School Board in effect prior this action was declared invalid by order of this Court on August 12, 1968 as in violation of the equal protection clause of the Fourteenth Amendment of the United States Constitution.

IV. VIOLATIONS OF LAW

9. The present apportionment of the East Carroll Parish Police Jury and School Board dilutes the relative strength of the class of black voters in East Carroll Parish in violation of the rights of plaintiff-intervenor and others similarly situated guaranteed by the Fourteenth and Fifteenth Amendment to the United States Constitution.

10. The present apportionment plan is violative of the rights of plaintiff-intervenor and others similarly situated secured by the Voting Rights Act of 1965, 42 U.S.C. 1971, et seq.

11. The present apportionment plan is contrary to the law of Louisiana in that Louisiana law (L.S.A. - R.S. 33:1221, et seq.) does not permit police juries and school boards to be elected at-large in the absence of the voided Acts Nos. 445 and 561 of 1968. The Court has pendent jurisdiction over this

cause of action.

V. EQUITY

12. There is a real and actual controversy between the parties. Plaintiff-intervenor has no adequate remedy at law. Plaintiff-intervenor is suffering irreparable injury as a result of the apportionment challenged herein, and that apportionment will continue unless enjoined by this Court.

VI. COLOR OF LAW

13. The apportionment scheme described above is maintained by the individual defendants under color of law of the State of Louisiana and under color of the defendants' respective offices as officers and agents of the State.

VII. PRAYER

14. WHEREFORE, plaintiff-intervenor respectfully prays:

(a) that this Court issue a preliminary and permanent injunction enjoining defendants from holding further elections under the present apportionment or districting plan for the East Carroll Parish Police Jury and School Board;

(b) that upon final hearing this Court issue a declaratory judgment that the action of defendants in maintaining the present apportionment of East Carroll Parish is violative of the rights of plaintiff-intervenor and the classes he represents secured by the Fourteenth and Fifteenth Amendments of the United States Constitution;

(c) that this Court order the reapportionment of the East Carroll Parish Police Jury and the School Board in a manner that conforms with the requirements of the equal protection clause of the Fourteenth Amendment as well as the

requirements of the Fifteenth Amendment, the Voting Rights Act of 1965 and Louisiana law.

(d) that this Court order new elections within ninety days of its order for each seat on the East Carroll Police Jury and School Board under the ordered reapportionment plan; and

(e) that this Court issue such further relief as may be just and proper.

Respectfully submitted,

STANLEY A. HALPIN, JR.
GEORGE M. STRICKLER, JR.
DEBRA A. MILLENSON
606 Common Street - Suite 405
New Orleans, Louisiana 70130
523-1797

By: Attorneys for Plaintiff-Intervenor

Dated: May 7, 1971

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

FILED
JUL 1 - 1971
CLERK

CHARLES F. ZIMMER, Plaintiff,
STEWART MARSHALL, Plaintiff-Intervenor,
v.
JOHN J. McKEITHEN, et al., Defendants.

CIVIL ACTION
NO. 13,927

PLAINTIFF-INTERVENOR'S PLANS FOR APPORTIONMENT OF THE EAST CARROLL PARISH POLICE JURY AND SCHOOL BOARD

Plaintiff-Intervenors submits the following two plans, both of which fall well within constitutional limits, for reapportionment of the East Carroll Parish Police Jury and School Board. Both plans are based upon Census Bureau enumeration districts and Census Bureau data. The two plans are labeled "Plaintiff-Intervenor's Plan Number One" and "Plaintiff-Intervenor's Alternate Plan."

PLAINTIFF-INTERVENOR'S PLAN NUMBER ONE

Plaintiff-Intervenor's Plan Number One is a combination of Census Bureau enumeration districts into four (4) electoral districts with a total of 7 members. Two of the new electoral districts will be single-member districts, one will be a two-member district, and one will be a three member district. It has a maximum deviation of +4.3% and a maximum deviation range of 8.2%. The Plan does not dilute the vote

of black residents of East Carroll Parish. From the one-man vote point of view this Plan is slightly superior to the alternate plan in that the top to bottom deviation is slightly lower and the election districts are slightly more compact. Number One is as follows:

ELECTORAL DISTRICT	ENUMERATION DISTRICT	TOTAL POPULATION	NUMBER OF REPRESENTATIVES	DEVIATION	% BLACK
I	1, 2, 3(PART) 9	1824	1	-1.0%	44.3%
II	11, 12, 13, 14, 15	3817	2	+3.7%	45.9%
III	8, 7	1938	1	+4.3%	59.8%
IV	4, 5, 6, 10, 3(PART)	5305	3	-3.9%	72.8%

IDEAL POPULATION FOR SINGLE MEMBER ELECTORAL DISTRICT	1841
MAXIMUM DEVIATION	+4.3%
TOTAL DEVIATION (Top to Bottom)	8.2%
AVERAGE DEVIATION	3.48%

PLAINTIFF-INTERVENOR'S ALTERNATE PLAN

Plaintiff-Intervenor's Alternate Plan is a combination of Census Bureau enumeration districts into three(3) single-member electoral districts, one two-member electoral district, and one three-member electoral district with a total of eight members. It has a maximum deviation of +4.2% which is 0.1% lower than Plan One, an average deviation of 3.07% which is 0.41% lower than Plan One, and a maximum deviation range of

8.3% which is 0.1% higher than Plan One, but is well within constitutional limits. Plaintiff-Intervenor's Alternate Plan also does not dilute the vote of black residents of East Carroll Parish. The details of the Alternate Plan are as follows:

ELECTORAL DISTRICT	ENUMERATION DISTRICT	TOTAL POPULATION	NUMBER OF REPRESENTATIVES	DEVIATION	% BLACK
I	14, 15	1647	1	+2.2%	53%
II	11, 12	1656	1	+2.5%	35%
III	1, 2, 9	1678	1	+4.2%	48%
IV	3(PART), 4, 7, 8	3275	2	+1.7%	55%
V	3(PART), 5, 6, 10, 13	4628	3	-4.1%	76%

IDEAL POPULATION FOR SINGLE MEMBER ELECTORAL DISTRICT	1611
MAXIMUM DEVIATION	+4.2%
TOTAL DEVIATION (Top to Bottom)	8.3%
AVERAGE DEVIATION	3.07

Respectfully submitted,

STANLEY A. HALPIN, JR.
GEORGE M. STRICKLER, JR.
DEBRA A. MILLENSON
606 Common Street - Suite 405
New Orleans, Louisiana 70130
523-1797

By: [signature]

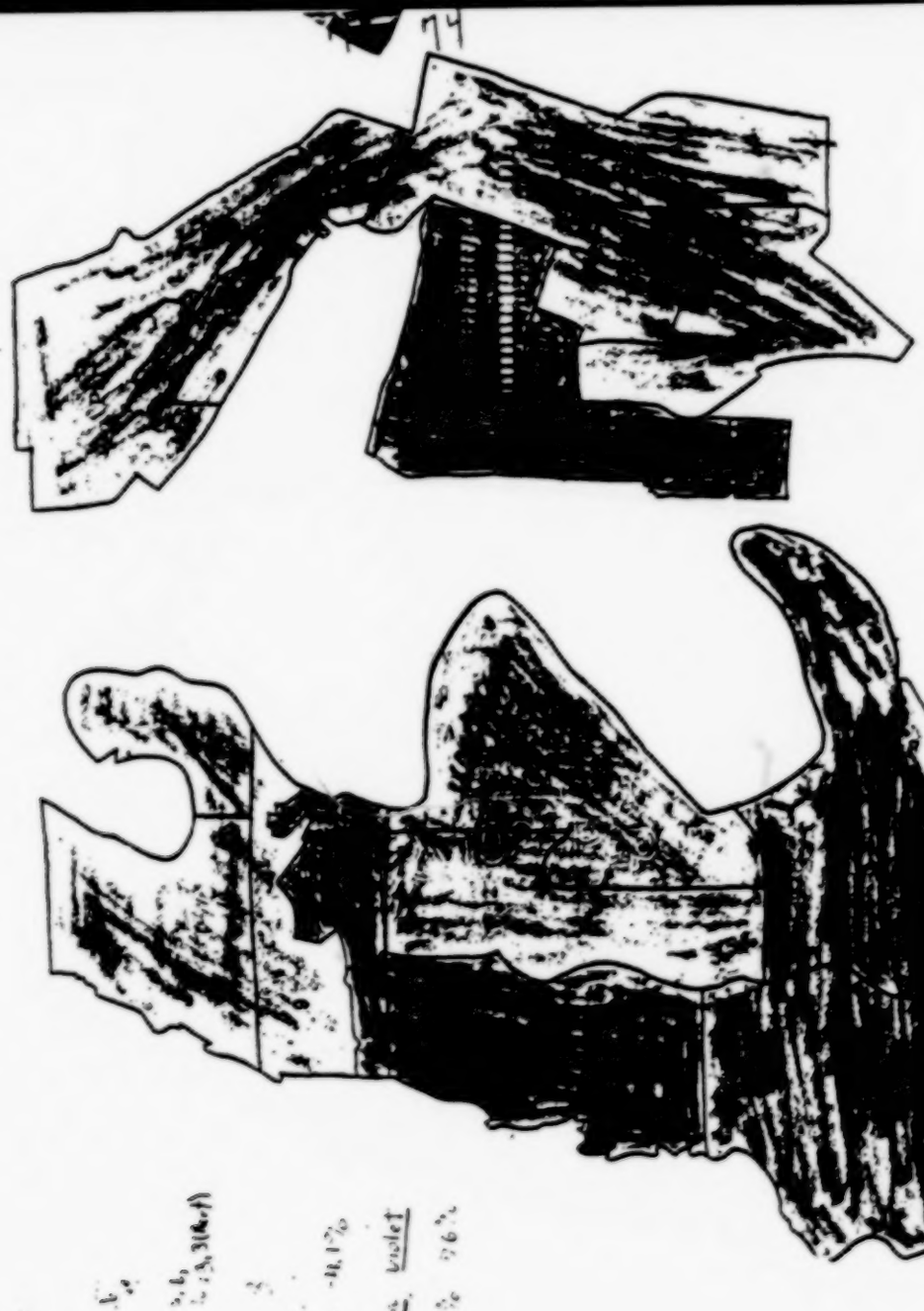
Dated: June 29, 1971

Lake Providence, East Carroll Parish

East Carroll Parish, Louisiana

PLAN I

	I	II	III	
	1	2	3	
	44.3%	45.5%	58%	72.6%



Lake Providence, East Carrol Parish, Louisiana

East Carroll Parish, Louisiana

Department of Justice
Washington
20530

13 JUL 1971

Mr. Louis R. Sleeth
District Attorney
28th Judicial District
Jena, Louisiana 71342

Dear Mr. Sleeth:

It is our understanding that in order to comply with the one person, one vote principle annunciated in Avery v. Midland, 390 U.S. 474 (1968), and pursuant to Louisiana Revised Statutes 33:1411, officials in virtually all parishes in Louisiana have reapportioned their parish's wards and election districts or will complete the process shortly.

Section 5 of the Voting Rights Act of 1965 (42 U.S.C. 1973c) provides for review by the Attorney General of the United States or the United States District Court for the District of Columbia when changes in voting procedure are enacted or are implemented by the states covered under Section 5 and their political subdivisions. Under the Supreme Court's recent reaffirmation of its broad interpretation of Section 5, a reapportionment of parishes within your district would be covered by that statute. Perkins v. Matthews, 400 U.S. 379 (1971).

If there has been an alteration of parish ward or election district boundaries, or in the weight of jurors' or board members' votes, it is necessary for the affected Police Jury or School Board to submit the changes to the Attorney General or the court as soon as possible. Unless and until the United States District

Court for the District of Columbia enters a declaratory judgment, or a change is submitted to the Attorney General and no objection has been interposed by him within 60 days after submission, Section 5 of the Voting Rights Act prohibits the implementation of the changes.

Our records disclose that not all of the parishes within your judicial district have submitted reapportionment plans for their school boards and police juries to the Attorney General or initiated an action for declaratory judgment. Accordingly, I would appreciate your letting this Department know within ten days if a reapportionment plan has been adopted within your district or whether such action is anticipated. In this connection, we would appreciate receiving a copy of any order adopted pursuant to Louisiana Statutes 33:1411. If a reapportionment plan has been adopted and the governing authority will choose to submit the plan to the Attorney General rather than instituting a lawsuit for declaratory judgment, please also inform us of when we may expect such submission. Gerald W. Jones, Chief of the Voting and Public Accommodations Section for the Civil Rights Division, will be available to discuss this matter with you if you have any questions. He can be reached by calling (202) 739-2167.

Sincerely,

David L. Norman

DAVID L. NORMAN
Acting Assistant Attorney General
Civil Rights Division

OFFICE OF
THE DISTRICT ATTORNEY
SIXTH JUDICIAL DISTRICT
EAST CARROLL · MADISON AND TENSAS PARISHES

THOMPSON L. CLARKE
DISTRICT ATTORNEY
ST. JOSEPH, LOUISIANA
OFFICE PHONE 9258

WILLIAM B. RAGLAND JR.
ASSISTANT DISTRICT ATTORNEY
LAKE PROVIDENCE, LOUISIANA
OFFICE PHONE 822

July 14, 1971

U. S. DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
FILED
JUL 16 1971
ALTON L. CURTIS, CLERK
By: D.

Mr. Alton L. Curtis, Clerk
United States District Court
Western District of Louisiana
Federal Post Office Building
Shreveport, Louisiana

Re: Charles F. Zimmer versus John J. McKeithen et als, Civil Action No. 13,927

Dear Mr. Curtis:

The Jury's alternate plan of reapportionment which Judge Dawkins ordered to be filed within 15 days after the filing of intervenors' plan, is enclosed herewith for filing in the captioned suit and presenting to the Court's attention.

Under separate cover, I have transmitted a copy of this filing to Mr. Halpin, Attorney of record for intervenors.

With best wishes, I am

Yours very truly,

William B. Ragland, Jr.

William B. Ragland, Jr.
Assistant District Attorney

WBRjr/hh
Enc.

U. S. DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
FILED
JUL 16 1971
ALTON J. CURTIS, CLERK
By
Dy.

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

MONROE DIVISION

*** * ***

CHARLES F. ZIMMER, Plaintiff

VERSUS CIVIL ACTION NO. 13927

JOHN J. McKEITHEN, ET AL., Defendants

*** * ***

MAY IT PLEASE THE COURT:

Although East Carroll Parish Police Jury considers its first plan of reapportionment by far the most constitutionally acceptable plan and again reurges its acceptance and adoption by this Court, nevertheless, as an alternate plan, and only in the event the Court should find its first plan to be unconstitutional, East Carroll Parish Police Jury then recommends the adoption of the following alternate plan of reapportionment, to-wit:

A. ALTERNATE PLAN OF REAPPORTIONMENT OF EAST CARROLL PARISH POLICE JURY

East Carroll Parish should be divided into two voting districts, to be numbered Districts 1 and 2, the geographical area of District No. 1 to coincide with the old municipal limits of the Town of Lake Providence (Enumeration Districts Nos. 3 through 8, inclusive), with four jurors to be qualified and elected at large therefrom, and District No. 2 to consist of the geographical area lying without District No. 1 with four jurors to be elected at large from this district. This plan would have a maximum deviation of 4.0 percent from the ideal figure and a maximum deviation range of

8.0 percent. This plan does not dilute the vote of the black residents of East Carroll Parish as black residents would enjoy a substantial majority in District No. 1 and a moderate majority in District No. 2. The plan would recognize the division of interest of the urban and rural areas as well as the advantage of avoiding any overlapping of urban districts with rural areas and vice versa.

This plan is mathematically superior to the primary and alternate plan submitted by intervenor as the maximum deviation and the total deviation is less. East Carroll Parish Police Jury's plan has an average deviation of 4.0 percent, only .52 percent greater than intervenor and only .93 percent greater than intervenor's alternate plan, both insignificant differences.

The black population in East Carroll Parish under the old ward system was distributed so that blacks enjoyed a majority position in Wards 1, 3, 4, 5 and 6, while white residents enjoyed majority populations in Wards 2 and 7. Taking the enumeration districts as they were drawn, it is impossible to produce a system of voting districts in East Carroll Parish, Louisiana, which would not substantially dilute the black vote, and actually place the blacks in a minority in Wards 1, 4, 5 and 6. Plaintiff's plan of at large voting is not only constitutional, but involves significantly less dilution than does either of intervenor's plans, and actually places each black resident in a black voting majority of almost three to two. These conclusions are graphically demonstrated by the following tables:

BEST COPY AVAILABLE

TABLE A

TOTAL POPULATION, TOTAL WHITES AND TOTAL BLACKS, 1970 CENSUS

ED. NO.	WARD	TOTAL POPULATION	W	N
0001	Ward 4	197	55	142
0002	Ward 5	642	216	426
0003	W-3 (Town)	146	141	5
0004	W-3 (Town)	1191	538	653
0005	W-3 (Town)	1265	336	929
0006	W-3 (Town)	1643	254	1389
0007	W-3 (Town)	867	375	492
0008	W-3 (Town)	1071	418	653
0009	W-3 (Rural)	839	604	235
0010	W-3 (Rural)	1206	314	892
0011	W-2	817	703	114
0012	W-2	839	368	471
0013	W-6	514	222	292
0014	W-7	772	466	306
0015	W-1	875	306	569
		12,884	5,306	7,568

TABLE B

TOTAL POPULATION, WHITE POPULATION AND BLACK POPULATION OF OLD WARDS, 1970 CENSUS

	TOTAL POPULATION	WHITE	NEGRO	% WHITE	% NEGRO
WARD 1	875	306	569	35.0%	65.0%
WARD 2	1656	1071	585	64.7%	35.3%
WARD 3	8228	2980	5248	36.2%	63.8%
WARD 4	197	55	142	27.9%	72.1%
WARD 5	642	216	426	33.6%	66.4%
WARD 6	514	222	292	43.2%	56.8%
WARD 7	772	466	306	61.4%	39.6%
TOTALS	12,884	5,316	7,568		

TABLE C

COMPARISON OF PERCENTAGE CHANGE IN BLACK POPULATION UNDER PARISH AND INTERVENOR'S PLANS

	PERCENTAGE OF NEGROES	PARISH PLAN PERCENTAGE OF NEGROES	INTERVENOR'S PLAN I PERCENTAGE OF NEGROES	INTERVENOR'S PLAN II PERCENTAGE OF NEGROES
WARD 1	65.0%	58.7	45.9%	53%
WARD 2	35.3%	58.7	45.9%	35%
WARD 3	63.8%	58.7	72.87%	76%
WARD 4	72.1%	58.7	44.3%	48%
WARD 5	66.4%	58.7	44.3%	48%
WARD 6	56.8%	58.7	45.9%	76%
WARD 7	39.6%	58.7	45.9%	53%

TABLE D

PERCENTAGE CHANGE OF BLACK POPULATION BY WARD UNDER PARISH AND INTERVENOR'S PLANS

WARD	PARISH PLAN	INTERVENOR'S PLAN I	INTERVENOR'S PLAN II
1 (Majority black)	-6.3	-19.1	-12.0
2 (Majority white)	+23.4	+10.6	-.3%
3 (Majority black)	-5.1	+9.0	+12.2
4 (Majority black)	-13.4	-27.8	-24.1
5 (Majority black)	-7.7	-22.1	-18.4
6 (Majority black)	+1.9	-10.9	+19.2
7 (Majority white)	+19.1	+6.3	+13.4

In summary, the at large voting plan sponsored by East Carroll Parish Police Jury has actually been in practice for about two and one-half years and the voting precincts have been set up to accommodate this plan. The same can be said of the voting

rolls as these, too, have been organized to accommodate the present at large voting method. The at large voting proposal eliminates any deviation between districts and actually accommodates the majority black population better than any plan presented to this Court. The plan guarantees no person, black or white, of election but places black candidates in a position to win public office if they are qualified and meet the requirements demanded of them by their constituency. Furthermore, under an at large voting plan, the necessity of voting district changes caused by population migration every ten years is virtually eliminated. Under any district scheme of voting, change in voting districts every ten years hereafter would almost be virtually assured. The only legal argument which can be raised against the at large voting procedure is that it dilutes the black vote, the evidence presented by East Carroll Parish Police Jury demonstrates mathematically that the Jury's plan preserves the integrity of the black population much better than does either of the two plans offered by intervenors. In the alternative, and only in the event the Court should reject the Jury's first plan of reapportionment, the Jury urges the adoption of its alternate plan on the grounds mentioned hereinabove.

Respectfully submitted,

EAST CARROLL PARISH POLICE JURY

By: J. E. "DOC" BROWN, President

William B. Ragland, Jr.
Assistant District Attorney

OFFICE OF
THE DISTRICT ATTORNEY
SIXTH JUDICIAL DISTRICT
EAST CARROLL · MADISON AND TENSAS PARISHES

THOMPSON L. CLARKE
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OFFICE PHONE 766-3236

WILLIAM B. RAGLAND, JR.
ASSISTANT DISTRICT ATTORNEY
LAKE PROVIDENCE, LOUISIANA
OFFICE PHONE 559

July 19, 1971

Judge Ben C. Dawkins
U. S. District Court
U. S. Post Office Building
Shreveport, Louisiana

Civ 13927

Dear Judge Dawkins:

Much to my surprise, I received a communication from the Justice Department with reference to the failure of the three parishes of the Sixth Judicial District to forward their plans for re-apportinment to the Justice Department for its approval. For your information I am enclosing herewith a copy of the communication in question.

As I recall, you first took the position that we would have to submit our plans to the Justice Department even though they had been finally approved by you. Then after the decision of Peggy J. Connor, et al v. Paul B. Johnson, et al, handed down by the Supreme Court on June 3, 1971, on an Application for Stay, we understood that if our plans were made an Order of your Court, we would not have to secure approval of the Justice Department.

The Court, in its Per Curiam, on Page 3 wrote: "Insofar as appellants ask relief under the Voting Rights Act of motion for stay is denied. A decree of the United States District Court is not within reach of Section 5 of the Voting Rights Act. However, other reasons lead us to grant the motion to the extent indicated below."

In view of the Justice Department's letter and the decision referred to, supra, the writer is at loss to determine what course of action we should take regarding the re-apportionment plans which have been approved in Madison and the ones which will be shortly submitted to the Court for East Carroll and Tensas Parishes.

Thusly, we will appreciate very much clarification from the Court as to what answer we should give the Justice Department relative to its communication.

Very truly yours,

Thompson L. Clarke

Thompson L. Clarke

Department of Justice
Washington
20530

13 JUL 1971

Mr. Thomsen L. Clarke
District Attorney
6th Judicial District
St. Joseph, Louisiana 71366

Dear Mr. Clarke:

It is our understanding that in order to comply with the one person, one vote principle annunciated in Avery v. Midland, 390 U.S. 474 (1968), and pursuant to Louisiana Revised Statutes 33:1411, officials in virtually all parishes in Louisiana have reapportioned their parish's wards and election districts or will complete the process shortly.

Section 5 of the Voting Rights Act of 1965 (42 U.S.C. 1973c) provides for review by the Attorney General of the United States or the United States District Court for the District of Columbia when changes in voting procedure are enacted or are implemented by the states covered under Section 5 and their political subdivisions. Under the Supreme Court's recent reaffirmation of its broad interpretation of Section 5, a reapportionment of parishes within your district would be covered by that statute. Perkins v. Matthews, 400 U.S. 379 (1971).

If there has been an alteration of parish ward or election district boundaries, or in the weight of jurors' or board members' votes, it is necessary for the affected Police Jury or School Board to submit the changes to the Attorney General or the court as soon as possible. Unless and until the United States District

Court for the District of Columbia enters a declaratory judgment, or a change is submitted to the Attorney General and no objection has been interposed by him within 60 days after submission, Section 5 of the Voting Rights Act prohibits the implementation of the changes.

Our records disclose that none of the parishes within your judicial district has submitted reapportionment plans for their school boards and police juries to the Attorney General or initiated an action for declaratory judgment. Accordingly, I would appreciate your letting this Department know within ten days if a reapportionment plan has been adopted within your district or whether such action is anticipated. In this connection, we would appreciate receiving a copy of any order adopted pursuant to Louisiana Statutes 33:1411. If a reapportionment plan has been adopted and the governing authority will choose to submit the plan to the Attorney General rather than instituting a lawsuit for declaratory judgment, please also inform us of when we may expect such submission. Gerald W. Jones, Chief of the Voting and Public Accommodations Section for the Civil Rights Division, will be available to discuss this matter with you if you have any questions. He can be reached by calling (202) 739-2167.

Sincerely,

David L Norman

DAVID L. NORMAN
Acting Assistant Attorney General
Civil Rights Division

LAW OFFICES
VOELKER, RAGLAND & BRACKIN
VARCO BUILDING
405 MORGAN STREET
LAKE PROVIDENCE, LOUISIANA 71254

FRANK VOELKER, JR.
WILLIAM B. RAGLAND, JR.
CHARLES R. BRACKIN

TELEPHONE
522 & 523
AREA CODE 318

July 19, 1971

Mr. Alton L. Curtis, Clerk
United States District Court
Western District of Louisiana
Federal Post Office Building
Shreveport, Louisiana

Re: Charles F. Zimmer versus John J. McKeithen et als, Civil Action No. 13,927

Dear Mr. Curtis:

The East Carroll Parish School Board's alternate plans of reapportionment which Judge Dawkins ordered to be filed within 15 days after the filing of intervenors' plan, are enclosed herewith for filing in the captioned suit and presenting to the Court's attention.

Under separate cover, I have transmitted a copy of this filing to Mr. Halpin, Attorney of record for intervenors.

With best wishes, I am

Yours very truly,

William B. Ragland, Jr.
Assistant District Attorney

WBRjr/hh
Enclosure

U. S. DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
FILED
JUL 20 1971
ALTON L. CURTIS, CLERK
By Bernadine Clarkson
D.

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

MONROE DIVISION

*** * ***

CHARLES F. ZIMMER, Plaintiff

VERSUS CIVIL ACTION NO. 13,927

JOHN J. McKEITHEN, ET AL., Defendants

*** * ***

MAY IT PLEASE THE COURT

Although East Carroll Parish School Board considers its first plan of reapportionment by far the most constitutionally acceptable plan and again reurges its acceptance and adoption by this Court, nevertheless, as an alternate plan, and only in the event the Court should find its first plan to be unconstitutional, East Carroll Parish School Board then recommends the adoption of one of the following alternate plans of reapportionment in the order set forth, to-wit:

A. FIRST ALTERNATE PLAN OF REAPPORTIONMENT OF EAST CARROLL PARISH SCHOOL BOARD

East Carroll Parish School Board should consist of eight members to be elected by staggered terms according to Louisiana law from five election districts, District No. 1 to be composed of Enumeration Districts 14 and 15, District No. 2 to be composed of Enumeration Districts 10, 11, 12 and 13, District No. 3 to be composed of Enumeration Districts 1, 2, 3, 4 and 9, District No. 4 to

be composed of Enumeration Districts 3 and 6, and District No. 5 to be composed of Enumeration Districts 5, 7 and 8, these Districts to furnish 1, 2, 2, 1, and 2 members, respectively, to the School Board. The ideal number of persons to be represented by each School Board member is 1,611. Districts 1 through 5, inclusive, would deviate from this ideal number plus 2.2 percent, plus 4.8 percent, minus 6.4 percent, plus 2.0 percent and minus 0.6 percent, respectively. The districts would contain a black population of 53.1 percent, 52.4 percent, 48.5 percent, 84.5 percent and 64.8 percent, respectively. The total deviation would be 11.2 percent, the average deviation 3.5 percent and the maximum deviation would be 6.4 percent. When compared to intervenor's plan No. 1, East Carroll Parish School Board's first alternate plan is 3.0 percent greater in total deviation, approximately the same average deviation and 2.1 percent greater maximum deviation.

B. EAST CARROLL PARISH SCHOOL BOARD SECOND ALTERNATE PLAN OF REAPPORTIONMENT

East Carroll Parish would be subdivided into five election districts, composed of the same enumeration districts as described in the first alternate plan, the districts to be qualification districts for the same number of persons as set out in the first alternate plan, with all members to be voted on at large throughout East Carroll Parish.

Under this plan, there would be .0 percent deviation; the members on the School Board would represent all areas of East Carroll Parish; the qualifying districts would provide about the proportion of members on the Board that its total population bears to the whole population of East Carroll Parish; and there would be a modicum of dilution of the black vote, and considerably less

dilution than either one of the two plans offered by intervenor.

The plans set forth above will be demonstrated by exhibits at the hearing and proof of the allegations of the superiority of the School Board's plans over intervenor's plans will be presented at the same time.

In conclusion, East Carroll Parish School Board requests the adoption of its first plan of reapportionment, failing which it recommends the adoption of either its first alternate plan or its second alternate plan, in that order.

Respectfully submitted,

EAST CARROLL PARISH SCHOOL BOARD

By Troyce B Dukes
Troyce B. Dukes, President

William B Ragland Jr
WILLIAM B. RAGLAND, JR.
Assistant District Attorney

STATE OF LOUISIANA
Twenty-Eighth Judicial District
CALDWELL & LASALLE PARISHES
P. O. BOX 650
COLUMBIA, LOUISIANA 71418

OFFICE OF THE DISTRICT ATTORNEY
HOLMES M. MOUSER

JENA, LA., PHONE 992-2007

July 21, 1971

Mr. David L. Norman
Acting Assistant Attorney General
Civil Rights Division
Department of Justice
Washington, D. C. 20530

Dear Mr. Norman:

Since your last correspondence with the District Attorney's Office in LaSalle Parish I have become District Attorney and my predecessor, Honorable Lewis R. Sleeth, to whom you addressed your letter of July 13, 1971, has become District Judge in this same judicial district.

I assume your letter refers mainly to the reapportionment proceedings in LaSalle Parish, because the proceedings that were undertaken in Caldwell Parish concerning the Police Jury were handled contradictorily and eventually resulted in a judgment rendered by the Honorable Ben C. Dawkins, presiding over the Monroe Division of the Western District of Louisiana. In view of the recent Supreme Court decision, we are under the impression that the Caldwell Parish matter is therefore concluded.

Since the LaSalle Parish matter was concluded, as for as I was concerned, before I took office, I will discuss your letter with Judge Sleeth and if the compromise worked out in that parish was accomplished without a judgment then we will be back in touch with you at a later date. That parish falls in the Alexandria Division and the proceedings were under Judge Nauman Scott of the Western District, Alexandria Division. I am having a conference with Judge Scott between now and July 26 concerning the school problem and I will discuss this matter with him also.

With best regards, I am

Very truly yours,

Holmes M. Mouser

HMM/pw

STATE OF LOUISIANA

Twenty-Eighth Judicial District

CALDWELL & LASALLE PARISHES

P. O. BOX 650

COLUMBIA, LOUISIANA 71418

OFFICE OF THE DISTRICT ATTORNEY
HOLMES M. MOUSER

July 21, 1971

PHONE 649-2067
JENA, LA., 992-5015

Honorable Ben C. Dawkins
Federal District Judge
U. S. Post Office & Court House
Shreveport, Louisiana 71100

Honorable Nauman S. Scott
U. S. District Judge
Federal Building
Alexandria, Louisiana 71301

Honorable Lewis R. Sleeth
District Judge
Twenty-Eighth Judicial District
Jena, Louisiana 71342

Gentlemen:

Enclosed you will find a letter addressed to my office from Mr. David L. Norman, Civil Rights Division, Department of Justice and my reply thereto, all of which is self-explanatory.

I will be in conference with all three Judges during the following week on other matters. At that time I would be happy to obtain each Court's position with respect to the request of the Department of Justice.

With kindest personal regards, I am

Very truly yours,

Holmes M. Mouser

HMM/pw

Enc.

OFFICE OF

THE DISTRICT ATTORNEY

SIXTH JUDICIAL DISTRICT

EAST CARROLL · MADISON AND TENSAS PARISHES

THOMPSON L. CLARKE
DISTRICT ATTORNEY
ST. JOSEPH, LOUISIANA 71366
OFFICE PHONE 766-3520

WILLIAM B. RAGLAND, JR.
ASSISTANT DISTRICT ATTORNEY
LAKE PROVIDENCE, LOUISIANA
OFFICE PHONE 559

July 22, 1971

Mr. David L. Norman
Acting Assistant Attorney General
Civil Rights Division
Department of Justice
Washington, D. C. 20530

Dear Mr. Norman:

In reply to your letter of July 13, 1971, inquiring about the reapportionment plans for East Carroll, Madison and Tensas Parishes, Louisiana, and requesting that they be sent for review and approval by the Attorney General of the United States, under Section 5 of the Voting Rights Act of 1965, I wish to advise that each of the three Parishes have been made defendants in reapportionment suits filed in the United States District Court for the Western District of Louisiana, Monroe Division, and docketed as follows:

Zelma C. Wyche, et al
Vs. The Madison Parish Police Jury, et al
Civil Action No. 14053,

Charles F. Zimmer
Vs. John J. McKeithen, et al
Civil Action No. 13927
(East Carroll Parish), and

Ples Bell, et al
Vs. The Tensas Parish Police Jury, et al
Civil Action No. 16670.

None of the plans will be final until approved by the District Court, and it is my understanding of the U. S. Supreme Court case of Peggy J. Connor, et al, V. Paul B. Johnson, et al, 91 U. S. 1760, (1971) that when the plans are handed down in a decree of the U. S. District Court, they are not within the reach of Section 5 of the Voting Rights Act, and need not be submitted to the Attorney General or the United States District Court of the District of Columbia for review and approval.

Mr. David L. Norman
July 22, 1971
Page 2

After receiving your communication, I conferred with Judge Ben C. Dawkins, presiding Judge of the Western District of Louisiana, relative to your instructions with reference to referring the plans to your Department, and he advised that Connor V. Johnson, cited supra, is controlling, and that any plan incorporated in a decree issued by him would not have to be submitted to you.

Very truly yours,

Thompson L. Clarke

Thompson L. Clarke
District Attorney
Sixth Judicial District, State of Louisiana

TLC:mc

cc: Judge Ben C. Dawkins
U. S. Post Office Building
Shreveport, Louisiana

Hon. William B. Ragland
Assistant District Attorney
Lake Providence, Louisiana

Hon. John T. Seale
Assistant District Attorney
Tallulah, Louisiana

Mr. Burton L. Wade
Attorney at Law
St. Joseph, Louisiana

Mr. Philip B. Watson, Jr.
Attorney at Law
St. Joseph, Louisiana

FILED
AUG 2-1971
CLERK

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

MONROE DIVISION

CHARLES F. ZIMMER

VERSUS CIVIL ACTION NO. 13927

JOHN J. McKEITHEN, ET AL

*** * ***

DECREE PROVIDING FOR THE REAPPORTIONMENT OF POLICE JURORS AND SCHOOL BOARD MEMBERS IN EAST CARROLL PARISH, LOUISIANA, ETC.

This Court having ordered East Carroll Parish Police Jury and East Carroll Parish School Board to submit their constitutionally satisfactory plans for the reapportionment of their respective bodies in accordance with the "one man - one vote" rule announced in Avery vs. Midland County, Texas, (Sup. Ct., April, 1968) 88 S. Ct. 1114, and subsequent cases; and East Carroll Parish Police Jury and East Carroll Parish School Board having submitted their respective plans for reapportionment to this Court; and intervenor having submitted a plan of reapportionment for each of said bodies as well as alternate plans of reapportionment; and the Court having conducted a hearing on July 29, 1971, at which the witnesses called by the respective parties were examined and cross-examined by the parties and the court; and the court having considered all plans presented as well as all alternate plans proposed by the parties hereto, it has made the following finding of facts:

1. That according to the 1970 U. S. Census, East Carroll Parish has a total population of 12,884 persons of which number

7,568 are blacks and 5, 306 are whites and other nationalities; that the black population of East Carroll Parish, Louisiana, comprises 58.7 percent of the total population.

2. That the plan of reapportionment offered by East Carroll Parish Police Jury and East Carroll Parish School Board is more satisfactory than other plans presented because it offers a zero deviation while all other plans considered did not.

3. That the plan of reapportionment offered by East Carroll Parish Police Jury and East Carroll Parish School Board does not dilute nor discriminate against the black population as the new voting unit from which officers of the jury and the board are to be elected is comprised of 58.7 percent blacks, or a substantial majority of blacks, while other plans considered diluted the black population of different areas within the parish significantly greater than the plan offered by the jury and school board.

4. That the plan recommended by East Carroll Parish Police Jury and East Carroll Parish School Board has actually been in effect in East Carroll Parish since December 2, 1968, and the plan has not proved discriminatory against blacks.

5. That the plan represents the wishes of both public bodies, having been endorsed by two of the three black public officials now serving on these public bodies.

6. That the plan of apportionment offered by East Carroll Parish Police Jury and East Carroll Parish School Board is a constitutionally acceptable plan and meets all of the requirements of the "one-man, one-vote" rule of law.

7. That the evidence adduced by intervenor failed to show that the plan offered by the two aforesaid public bodies would discriminate against blacks or in any manner dilute the black

population.

ACCORDINGLY, IT IS HEREBY ORDERED, AND DECREED that East Carroll Parish, Louisiana, be and it is hereby reapportioned as follows:

East Carroll Parish, Louisiana, be and it is hereby subdivided into seven wards, each of which shall conform to the same geographical boundaries and areas as the existing wards; each newly created ward shall be numbered as the existing ward which it replaces; that one (1) Police Juror and one (1) School Board member shall be elected from each of the newly created wards numbered 1, 2, 4, 5, 6 and 7, and three (3) Police Jurors and three (3) School Board members from the newly created Ward Three (3), all Police Jurors and School Board members to be elected at large throughout East Carroll Parish, Louisiana; and that the newly created Police Jury offices and School Board offices be filled as the terms of the present office holders expire, according to and in the manner prescribed by the Louisiana election laws applicable thereto.

IT IS FURTHER ORDERED, that all or any part, of any order previously issued herein which is in conflict herewith is hereby revoked and rescinded.

Signed at Shreveport, Louisiana, this 2nd day of August 1971.

Ben C. Dawkins

BEN C. DAWKINS, JR., Chief Judge,
United States District Court for
the Western District of Louisiana

Approved as to form:

William B. Ragland, Jr.

William B. Ragland, Jr.
Attorney for East Carroll Parish
Police Jury and East Carroll
Parish School Board

Clerk

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

MONROE DIVISION

U. S. DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
FILED
A[illegible]9-1971
ALTON L. CURTIS, CLERK
By [illegible] D

CHARLES F. ZIMMER, Plaintiff, STEWART MARSHALL, Plaintiff-Intervenor, v. JOHN J. McKEITHEN, et al., Defendants.	CIVIL ACTION NO. 13927

NOTICE OF APPEAL

Notice is hereby given that Stewart Marshall, Plaintiff-Intervenor herein, appeals to the United States Court of Appeals for the Fifth Circuit pursuant to Rule 73(b) of the Federal Rules of Civil Procedure and Rule 3(b) of the Federal Rules of Appellate Procedure from an order of this Court dated August 2, 1971.

Respectfully submitted,

STANLEY A. HALPIN, JR.
DEBRA A. MILLENSON
606 Common Street - Suite 405
New Orleans, Louisiana 70130
523-1797

By: [signature]

Dated: August 4, 1971

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

MONROE DIVISION

U. S. DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
FILED
A[illegible]9-1971
ALTON L. CURTIS, CLERK
By [illegible] D

CHARLES F. ZIMMER, Plaintiff, STEWART MARSHALL, Plaintiff-Intervenor, v. JOHN J. McKEITHEN, et al., Defendants.	CIVIL ACTION NO. 13927

DESCRIPTION OF PARTS OF TRANSCRIPT APPELLANTS INTEND TO INCLUDE IN THE RECORD AND STATEMENT OF ISSUES THEY INTEND TO PRESENT ON APPEAL

Please take notice that plaintiff-intervenor appellant in this action intends to include all of the transcript of testimony in the record on appeal.

Plaintiff-Appellant intends to present the following issue on appeal:

Whether the Court erred in approving an apportionment plan which by prescribing that all members of the East Carroll Parish Police Jury and School Board be elected at large, dilutes the effect of the vote of black citizens of that parish.

Respectfully submitted,

STANLEY A. HALPIN, JR.
DEBRA A. MILLENSON
606 Common Street - Suite 405
New Orleans, Louisiana 70130

By: [signature]

Dated: August 4, 1971

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

MONROE DIVISION

U. S. DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
FILED
OCT 18 1971
ALTON L. CURTIS, CLERK
By: Deputy

CHARLES F. ZIMMER :
:
VERSUS : NO. 13,927
:
JOHN J. McKEITHEN, ET AL. :

Transcript of proceedings in the above-entitled action, before the Honorable Ben C. Dawkins, Jr., United States District Judge, at Monroe, Louisiana, on July 29, 1971.

APPEARANCES: Messrs.:

STANLEY A. HALPIN, JR.
Attorney for Plaintiff

WILLIAM B. RAGLAND, JR.,
Assistant District Attorney,
East Carroll Parish, Louisiana
On Behalf of the Defendants

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THE COURT: You may proceed, Mr. Ragland.

CHARLES O. REED,

called as a witness on behalf of the defendants, being first duly sworn by the Clerk, testified as follows:

DIRECT EXAMINATION

BY MR. RAGLAND:

Q Mr. Reed, will you please state your full name?

A Charles O. Reed.

Q Your residence?

A Lake Providence, Louisiana, East Carroll Parish.

Q What is your official connection with any public body of East Carroll Parish?

A I am the Secretary-Treasurer of the East Carroll Parish Police Jury.

Q How long have you served in this capacity?

A A little bit over two years.

Q Mr. Reed, during the course of your tenure in that position have you attended all of the meetings of the Police Jury with respect to reapportionment?

A Yes.

Q Have you not only been present but also transcribed these proceedings in note form and in some cases by transcription belt?

SIDNEY YOUNG COURT REPORTER

A Yes.

Q During the course of these proceedings, have you had an opportunity to actually record in the records of your materials in the Police Jury Office a Resolution which set forth a reapportionment plan that was voted upon by the East Carroll Police Jury?

A Yes.

Q Was this pursuant to and in response to a letter from this Court to the East Carroll Parish Police Jury earlier this year?

A Yes.

Q Would you tell us what the result of this Resolution was, and refer to a map which is to your right, and explain to the Court exactly what the Resolution said and meant?

A The Resolution adopted by the East Carroll Parish Police Jury submitted to the Court a nine-member reapportionment plan for East Carroll Parish whereby each member would be qualified to be elected by district.

I am looking at the yellow district which is the old ward line of Ward 4. A person to qualify to represent that particular area would have to live in that area so he would be voted on at large by the people of East Carroll Parish.

In green, to qualify his residency should be within the green area. In the brown area and blue area and the

SIDNEY YOUNG, COURT REPORTER 311 FEDERAL BLDG., SHREVEPORT, LA

orange area and the purple area, each one of those would qualify and elect one representative.

Q How would these other areas be voted upon, the green, the brown and blue and so on; within districts or at large?

A At large. They will be voted on at large.

One of the requirements would be that they live and reside in these areas and they would be voted on at large.

In the red area the Resolution qualified a three-member representation. The requirements will be they reside in this particular red area. They would also be voted on at large by East Carroll Parish.

Q Is this a new plan for East Carroll Parish or is it an existing plan of reapportionment?

A This plan was adopted in 1968 and it has been in effect since that time.

Q Have any elections been held in East Carroll Parish after the adoption of this at-large plan?

A Yes.

Q Would that mean the voting system in force now with respect to precinct registration rolls, are they presently set up to accommodate this particular system of electing people to the Police Jury?

A Yes, they are.

Q Would you tell me how many members are on the Police

Jury now?

A At the present time there are only eight members on the Police Jury.

Q Would you please explain why?

A Effective June 30 of this year Arnie L. Wilson, Jr. was a member of the East Carroll Parish Police Jury. He qualified by his residency being in the old Ward 3.

Q What color is that?

A It is red on the map. Mr. Wilson accepted a transfer by his company in the insurance business and transferred to the State of Mississippi. He resigned effective June 30.

Q May I assume that position has not been filled according to the method prescribed by Louisiana law?

A That is true, it has not been filled.

Q Of the eight remaining jurors, could you tell me the racial makeup of those persons? Are there any colored members on the Police Jury?

A Yes, we have two colored members.

Q Will you tell me where they come from?

A Watson Sanders in the orange area, the old Ward 1 on the bottom right-hand part of the map.

In the red area, Otis Birdwell, Sr. is a member of the Police Jury.

Q When this plan was first adopted by the East

SIDNEY YOUNG, COURT REPORTER 311 FEDERAL BLDG., SHREVEPORT, LA

Carroll Police Jury, was it the unanimous plan of this Jury?

A No, it was not.

Q Were there dissenters and, if so, who were these persons?

A There was one dissenter and that was Watson Sanders representing Ward 1.

Q Since that time has the East Carroll Police Jury polled itself as to whether or not this plan was to be presented to the Court as the unanimous consent of that Jury?

A Yes.

Q What was the result of that particular vote?

A Unanimous that it would be presented as a No. 1 plan.

Q Are you saying all members, including the two colored officials, supported this plan as the No. 1 plan for East Carroll Parish?

A Yes.

Q And you are authorized to make such a statement to this Court at this time?

A Yes.

Q Do you have anything else to say in regard to this plan? You sit in on all the meetings. Was this plan voted to be especially adaptable to East Carroll Parish or did it have some benefits the Jury found to be much better than other plans offered them? Why did they select this plan,

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in short?

A For a number of reasons. I believe deviation is a factor in reapportionment and the deviation is 0.0. I think the Jury selected it on account of the geographical areas the members would represent and still be voted on at large throughout the Parish of East Carroll.'

Q You say there is a geographical representation assured under this plan. Will you explain that?

A The area colored in yellow is the old ward line for Ward 4 and we felt like a representative in that area would better represent the people as to the drainage ditches, the roads, the inspection of these ditches and roads.

We felt like the voting rolls have been set up for this type of government; that it would be less cost to the Police Jury and to the people, as well as the assessment rolls.

Q I notice you referred to three persons coming from the red colored district which is old Ward 3. Was there any particular reason why they ask more people come from that area than the other areas, where in the other areas only one person would be qualified and seated on the Jury?

A It seems the larger part of the population is from the red area. The Town of Lake Providence is in that area.

You might say there are three different types of people in that area -- people from the rural area, suburban people and people from the town. We felt it needed more

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representation for more different types of people.

MR. RAGLAND: Tender the witness.

CROSS EXAMINATION

BY MR. HALPIN:

Q Mr. Reed, you indicated that the black members of the Police Jury who are presently serving are from this area and this area; is that correct?

A That is correct.

Q They were not elected under the at large system, were they?

A I don't believe they were elected under the at large system.

Q They were elected under the old system when you had the parish divided up in individual wards?

A That is correct.

Q Is it not true by changing from wards to at large elections, most assuredly there would be no blacks elected to the Police Jury if the elections were held tomorrow at large?

A If you are asking for my opinion, I feel there will be some blacks elected.

Q Some whites elected, too?

A Probably.

Q Do you think the present two members of the Police

Jury can possibly be elected under the new at large plan?

A They have been very good representatives. I see no reason why they could not. This is my opinion.

Q Have you had opportunity to examine the eight-member plan which we have submitted?

A Yes, I have examined it.

Q What would be the objection of the Police Jury to a plan such as this, if any?

A Well, I would really have to get into the facts and I can't speak for the Jury, but I believe I could throw this out: I believe it might be in some of my study, if I remember right, maybe the rural black resident would not be adequately represented. I believe their vote would probably be diluted.

Q You are saying as opposed to your at large plan?

A Yes.

Q Other than that particular feature, would there be any serious objection you could see to this plan as a method of districting East Carroll Parish?

A I can only compare it with the at large plan, if you would like for me to do so.

Q Can you make the assumption?

Let us assume the at large plan is out and the Police Jury has to come up with a plan other than an at large plan. Would this plan, or let me also indicate this other

plan we filed into the record -- a nine-member plan --

MR. RAGLAND: Your Honor, in order to protect my case, as the Court knows, this other plan was handed to us after we started and none of these people have had an opportunity to examine and study it. He should not question him about his plan which we have not had an opportunity to review yet.

I ask the Court to reserve to me and my witnesses an opportunity to see and study that plan before we have anything to say about it.

MR. HALPIN: I want to get some idea if there is a particular feature of this plan. The witness doesn't have to have the opportunity to examine it in detail.

BY MR. HALPIN:

Q This plan has nine members. It has got a total deviation of 5.76 per cent. It has four wards.

Ward 1, which is the red ward, has one representative and it is forty-four per cent black.

Ward 2, which is the green, takes in this part of Lake Providence as well as this rural part. That ward has 61.8 per cent black.

Ward 3, which is the blue area in this part of Lake Providence, has four members and it has about sixty-nine per cent black population.

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Ward 4, which is the orange ward below, elects two members and has forty-three per cent black population.

Offhand, and understanding this is the first time you have seen this plan, if the Court should rule the at large plan would not be acceptable, would the Police Jury have any serious objection to this plan as a method of re-apportionment?

A Mr. Halpin, I believe in all of our deliberations on reapportionment these multi-member districts have been one objection to the Police Jury of East Carroll Parish and this plan does have an election district where there are four; another where there is one, and two more that have two members, and in all of our study we feel like the multi-member districts where they have four members would really have more representation, you might say, than maybe the smaller representation wards. That would be one objection.

Q Have you attempted to discuss a single-member district for the parish? In other words, eight or nine individual districts or wards where each would elect one person?

A If you are asking have I --

Q Has the Police Jury?

A There hasn't one that has been presented at a meeting. I am sure there have been occasions where it was tried to be figured out on the enumeration district basis. There hasn't been one presented at a meeting.

MR. HALPIN: No further questions.

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LOUIS L. MINSKY,

called as a witness on behalf of the defendants, being first duly sworn by the Clerk, testified as follows:

DIRECT EXAMINATION

BY MR. RAGLAND:

Q State your name for the record, sir?

A Louis L. Minsky.

Q Mr. Minsky, may I assume you are a resident of East Carroll Parish?

A Right, sir.

Q What official position do you hold in that parish?

A I am a Police Juror from the now existing Third Ward.

Q How long have you served as such an officer?

A The election, I believe, was held in November, 1967. I come up for re-election this coming November.

Q May I assume you have been in on most, if not all, East Carroll Parish Police Jury discussions pertaining to re-apportionment?

A Yes, sir.

Q Were you a member of the Reapportionment Committee?

A Yes, sir.

Q Will you tell me what this committee was composed of?

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A It consisted of the whole Police Jury.

Q How long has the Jury acted as a committee of the whole to study the matter of reapportionment?

A It seems like shortly after we went in office there was some discussion about reapportionment and I think at that time there was an existing Reapportionment Committee before then, and we did away with that and appointed ourselves as a Reapportionment Committee. So, I would say three years, maybe.

Q Is the Police Jury presently under an order of reapportionment from this Court?

A Yes, sir, to my knowledge they are.

Q The plan which has been described and discussed before the Court here, is that the plan which has been adopted by the East Carroll Police Jury as its first plan?

A Yes, sir.

Q Taking this plan as it is, can you tell me why the East Carroll Parish Police Jury took it over other plans considered if others were, in fact, considered?

A I can only elaborate on what Mr. Reed said. I think primarily we took this plan because it did give geographical representation and we adopted this plan under mandate from the Federal Court when it was adopted.

In my opinion, we didn't want to deviate from the plan we had which was the old ward plan. I think by having

an at large setup like this you get far better representation from your Jurymen because they are responsible to all the people in the parish.

Q Did you not notice a change when jurors were elected from a ward and when the members of the jury were elected at large?

A Yes, sir, I think there has been a drastic change.

Q In what way?

A The rural members have been more responsible to the urban members.

I am a businessman and own a business. I think prior to the at large plan we weren't considered at all and this at large plan changed this entirely.

Q What about the consideration of the black and white citizens in East Carroll Parish? Was that considered as one of the elements in establishing this plan?

A Yes, sir. Mr. Ragland, I hate to elaborate how detailed we went into it, but I think it was given some consideration. I will say that with some reservation.

Q Did you all consider the element of dilution in comparing these plans?

A Yes, sir. To my knowledge, we didn't have any figures. The only figures might have been the 1960 census. I just don't remember, quite frankly, if we did it as good like we might have done it in a general manner.

Q Did you consider the plans that had been presented by the Intervenor in this case, that is, the two plans presented by the others?

A Yes, sir, I looked into them in quite some detail.

Q I believe at least one of those plans is up on the board now. The seven-member plan which was Plan No. 1 submitted by the Intervenor is not there, but it appears on this board over here.

Did you make a study of those plans and compare them to the at large plan which was adopted?

A Yes, sir.

Q What disadvantages would you say were in these plans that you thought the at large plan eliminated?

A Really, Mr. Ragland, I can't think of any particular advantage. We refer to our plan as a single-member district; is that correct?

Q This plan which is on the large board to your left I believe is the No. 2 Plan.

MR. HALPIN: Why don't we call that the seven, eight, and nine-member plan; the first is the eight, and the second is the nine.

BY MR. RAGLAND:

Q You haven't seen this nine-member plan until today. Looking at the other two plans, you did have and did consider

them and try to find out whether or not they were better or had worse characteristics in the plan you were going to ask this Court to take?

A As I said before, I think our plan is superior and I stated why it was superior.

Q Looking at this plan, what characteristics did you find in it that you didn't find in this one?

A Is this their eight-member plan?

Q That was the seven-member plan marked Plan No. 1.

When you considered this, what things did you find in Plan No. 1 that were inferior to the plan submitted by the Police Jury?

A I think primarily your green area is such a large area you wouldn't have as good representation from this large area.

As I stated before, these people elected in the different geographical areas, they wouldn't be responsible to the rest of the parish.

Q You base your selection of your plan over that Plan No. 1 because the south district there has a large territory and it is represented by, I think, only two people?

A Right. If it is represented by two people, that is correct.

Q What about in the green area? Would you have any assurance, for example, old Ward 1 would have someone on the

Police Jury and Ward 7 would have someone on the Police Jury? Would there be absolute assurance there would be distribution of representatives on that Board?

A Frankly, I think they would come from one isolated area in the green area. I think they would come primarily from your Translyvania area. I don't think this is good because you have such a large geographical area and we are primarily a rural farming community and we need geographical representation broken down in as small areas as possible because these people have to take care of our problems.

In our particular situation in East Carroll Parish, the Police Jury is primarily a rural governing body and it functions for the purpose of farmers and most of our revenue goes to drainage and road maintenance and things along these lines. I think the more people you have representing more different areas, the better it is.

Q You are from the Town of Lake Providence?

A Yes, sir. I live in the Lake Providence city limits.

Q And you just said this government really doesn't work outside of the town. Can you tell me offhand what the Police Jury really does inside the municipal limits of Lake Providence?

A I would say as far as expenditure of dollars and cents, I think the percentage would be very low as far as

SIDNEY YOUNG COURT REPORTER 311 FEDERAL BLDG. SHREVEPORT, LA

the city against the rural area.

Since we have had the at large voting the Police Jury gave $10,000.00 of the state money to the city and the city, I think, was deserving of it and they needed it. I don't think this ten thousand dollars would have ever been received by the city if it hadn't been for the at large voting.

Q When you are talking about this one gift you made to the Town of Lake Providence, did you decide where these funds would be spent?

A No, sir, we gave $10,000.00 to the Town Council and they could use it at their own discretion.

Q Wouldn't it be fair to say you really didn't do anything inside the town?

A That's right, other than there might be minor things. We make appointments to the Port Commission and things of this nature, which, in my opinion, are not real important as far as monetary value.

Q What are the big functions of the Police Jury? What are the things that takes up most of the Police Jury's time?

A I think in East Carroll Parish you would have to say the primary functions are for the drainage of the rural farmlands and maintenance of rural roads and another big part of our business is we have a prison farm in East Carroll

SIDNEY YOUNG, COURT REPORTER 311 FEDERAL BLDG. SHREVEPORT, LA

Parish and we have a separate Prison Board consisting of Police Jurors which I happen to be on. This is one of my primary interests on the Police Jury. I think these three things are the primary functions of the Police Jury.

Q Is that prison district located within or without the Town of Lake Providence?

A It is located in the purple area, which is presently Ward 2.

Q Did you consider the fact that the plans that were offered by the Intervenor in this case had multi-member districts involved in it?

Did you give consideration to that and, if so, what was it?

A Yes, sir, we were all aware of what the plans were. I think we considered their plan. We were aware they were multi-member districts, yes, sir.

Q When Mr. Halpin interrogated your secretary, he asked him if he thought under the at large voting scheme if a black could be elected. I would like to ask you that question?

A Yes, sir, I think so. I think very strongly that one in particular can be elected. I think in addition to that if more qualified black people run from East Carroll Parish, I think they can be elected. There is no limit on the number they can elect.

SIDNEY YOUNG COURT REPORTER 311 FEDERAL BLDG. SHREVEPORT, LA

Q Are you familiar with the Town of Lake Providence because you are a citizen and businessman in it and are you, therefore, familiar with local politics of that city?

A I am familiar with it because I was born and raised in Lake Providence. I am in business there and I love Lake Providence and I am also familiar with the politics.

Q Is not your father the Mayor of the Town of Lake Providence?

A Yes, sir.

Q Is it not true that together you work in a pharmacy in Lake Providence?

A Yes, sir.

Q You are aware of the makeup of the Board of Aldermen of the Town of Lake Providence?

A Yes, sir.

Q You know all of the people in it?

A Yes, sir, I think so.

Q Are you aware that these people represent the geographical area known as the Town of Lake Providence?

A Yes, sir.

Q Are you aware of the fact these people qualify and they have to submit themselves to the vote of the people in that area?

A Yes, sir.

SIDNEY YOUNG COURT REPORTER 311 FEDERAL BLDG. SHREVEPORT, LA

Q Are you aware this area has approximately a two to one black population?

A Yes, sir, something like four thousand to two thousand, roughly.

Q You have seen the statistics?

A Yes, sir. It is something like two to one.

Q Are you aware that the black proportion in the population there is greater than it is parish-wide?

A Yes, sir.

Q Are you aware because you have looked at the figures that the blacks have approximately 58.7 per cent of the total population of the parish?

A Right.

Q Within your experience and knowledge, have blacks run for office within the Town of Lake Providence within the last five years?

A Yes, sir. As a matter of fact, Mr. Jackson ran against my father for Mayor.

Q Can you think of any other occasion?

A Mr. Marshall ran for Marshal in that same election.

There were some colored candidates in the first primary of the Board of Aldermen's race.

Q Have any of these colored candidates ever won an office in the Town of Lake Providence?

A To my knowledge, no, sir.

SIDNEY YOUNG COURT REPORTER 311 FEDERAL BLDG. SHREVEPORT, LA

Q Since 1965, all colored candidates who have offered themselves for office were defeated; is that not correct?

A To my knowledge, yes, sir.

Q Of course, the Town of Lake Providence because it is a political unit within a boundary, is it in a sense an at large system within the town itself?

A Yes, sir, we have to consider it completely as an at large system.

Q Although the blacks in that area have a proportion of two to one, no black has ever been able to win an election?

A To my knowledge, I can't think of any. There are none presently serving on the Board of Aldermen.

Q Would you say the fact that these candidates have not been able to win an office, has that been due to the at large system which existed in the Town of Lake Providence?

A No, sir, I don't think so.

Q Do you have any idea why that happens?

A I think without a doubt you would have to say the black candidates just haven't gotten enough black votes. I think this is a primary reason. There might be some secondary reasons. Primarily, the blacks haven't voted entirely black.

Q Even in the Town of Lake Providence, do you feel if a qualified black submits himself for office he can be elected?

A I certainly do. I strongly feel that.

SIDNEY YOUNG COURT REPORTER 311 FEDERAL BLDG. SHREVEPORT, LA

MR. RAGLAND: Tender the witness.

CROSS EXAMINATION

BY MR. HALPIN:

Q You mentioned if a qualified black would present himself for office in the present system, you think it is possible for him to be elected. It is true, in fact, there are many qualified blacks who live in East Carroll Parish in the Town of Lake Providence?

A Yes, sir, I think there are.

Q You mentioned that you are very familiar with the politics in Lake Providence and East Carroll Parish. Is it not true prior to 1960 practically no blacks were registered to vote in that parish?

A Mr. Halpin, I am sure you are right. Prior to 1960 I was off in New Orleans in school. From 1956 to 1963 I was not residing in Lake Providence.

Q You were aware at some point no blacks were allowed to register to vote in that parish?

A Yes, sir.

Q And you also are aware Federal Registrars were sent to that parish to register voters?

A Yes, sir.

Q And, in fact, most of the blacks who registered to

SIDNEY YOUNG, COURT REPORTER 311 FEDERAL BLDG. SHREVEPORT, LA.

vote were registered by Federal Registrars?

A Yes, sir.

Q You indicated your father was elected and gave some explanation for the reason. Is it not true also in that election a white area was annexed into the town?

A You say in that election?

Q Before the election?

A Yes, sir, there was prior to the election.

Q You are also aware the former Mayor and the Chief of Police refused to allow black candidates to use loud speakers?

A I would rather not get into that because I am not aware what happened in town politics prior to the time my father went in as Mayor.

Q You weren't in town at the time he ran?

A Yes, sir, I was running my business.

Q You didn't follow that election rather closely?

A Yes, sir. Like I say, I have a vague memory of this loud speaker thing. I don't know any of the details because I am not familiar with it.

Q Don't you think East Carroll Parish has a long history of discriminating against black voters?

A Yes, sir. You can interpret it in a lot of different ways prior to 1964 and 1965. That is true. I think the discrimination has lessened.

SIDNEY YOUNG, COURT REPORTER 311 FEDERAL BLDG. SHREVEPORT, LA.

Q Are you testifying there was no attempt in drawing the plan to design a plan which the present white incumbents would have the greatest opportunity of getting elected?

A Repeat that again?

Q Did not the Police Jury draw a plan with the idea in mind of assuring that the present white members of the Police Jury would be the best plan to get them elected?

A No, sir, I don't think so. I think there were considerations given to a lot of plans which, you might say, had a selfish overtone.

Q You think the majority of the Police Jury would adopt a plan which they think would defeat the majority of the Police Jury in their next election?

A Repeat that again?

Q Do you think the Police Jury would pass a reapportionment plan which they believed would defeat the majority of the present Police Jury in the next election?

A Yes, sir, I think there is a possibility of it. Yes, sir.

Q They don't vote on reapportionment plans to preserve their situation?

A I think sub-consciously we have a selfish motive. To me, it was a secondary motive. I believe it is not the primary motive.

Q Was there any attempt that you know of to draw a

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single-member district plan of reapportionment for East Carroll Parish?

A Yes, sir, there was a very serious attempt.

Q What happened? Was that single-member district plan devised?

A By single-member plan, do you mean nine single-member districts?

Q Yes.

A No, sir, there was no effort at all. We looked at the enumeration districts and saw it just wasn't possible to use an enumeration district as our guide line and come within anything that would be in reason as far as your deviation.

Q In other words, it is your opinion any plan in East Carroll Parish because of the configuration of the enumeration districts would necessarily have to contain some multi-member districts?

A Yes, sir, I think so. I have given considerable thought to this and looked at the figures real closely, yes, sir.

Q You said you have examined our eight-member plan and you have seen our nine-member plan today?

A I haven't seen your nine-member plan, I glanced at it vaguely.

Q This is the nine-member plan here?

A Yes, sir.

SIDNEY YOUNG, COURT REPORTER 311 FEDERAL BLDG., SHREVEPORT, LA.

Q I direct your attention to the eight and nine-member plan.

A Mr. Halpin, I would not prefer to discuss the nine-member plan at all.

Q I will ask the questions and your counsel will object and the Court will come to see whether you have to answer.

First, directing your attention to the eight-member plan -- you mentioned it is impossible to get single-member districts in the parish. Is it not true that the eight-member plan appears to be the only way you can separate the districts into some sort of wards with multi-member districts and come up with the eight-member plan?

A Not wards. I think by using enumeration districts, yes, sir.

Q That is about the only way of drawing an eight-member plan?

A Yes, sir.

Q The nine-member plan which I direct your attention to, which has one representative from the red area which is forty-four per cent black; the green area, which is sixty-two per cent black, and two members; the blue area, which is sixty-nine per cent black with four members; and from the orange area with two members which is forty-two per cent black.

SIDNEY YOUNG, COURT REPORTER 311 FEDERAL BLDG., SHREVEPORT, LA

Did the Police Jury experiment with any nine-member plans other than the at large plan to try to devise a nine-member plan?

A Mr. Halpin, I didn't. To my knowledge, we never got together as a group prior to the time we had our plans and tried to really come up with a plan similar to your eight-member plan.

Mr. Reed worked extensively on a plan in trying to fit the puzzle together, which I will call it.

Q You didn't come up with anything except at an large plan and a second plan which has two districts in it; is that correct?

A You mean was it considered?

Q Considered?

A Yes, sir, there was another plan considered.

Q Was that a plan which had several districts such as the plans here?

A I think, in short, it was a plan similar to your eight-member plan.

Q The Police Jury chose not to adopt that plan?

A Yes, sir.

Q Were there any particular reasons given in rejecting that plan?

A No, sir, there was not.

Q What is your experience with the Police Jury, and

SIDNEY YOUNG, COURT REPORTER 311 FEDERAL BLDG., SHREVEPORT, LA

so on?

Did you vote to reject the plan?

A I resolved the plan. I offered this plan.

Q You are in favor of it?

A Yes, sir.

Q But you don't know why the rest of the members of the Police Jury rejected it?

A No, sir.

Q Would it have divided up the parish into five different districts or four different districts?

A Five different districts, I think.

Q At least one had two members in it?

A One had two members. There were two areas that had two members each.

Q And the rest was one?

A Yes, I think so.

Q Again making an assumption; assume the Court would rule that the at large plan is constitutionally unacceptable, would the eight or nine-member plan we have presented be in some way acceptable to you as a member of the Police Jury?

A Personally it would be. I am speaking for myself.

Q You don't know that it would gain the majority on the Police Jury?

A I will say that with some reservation. I stated my reason why the at large plan is superior to your plan. I say

this only in case the at large plan is out.

Q Do you think the Police Jury could essentially live with one of these plans in that case? Are there any serious defects with the plan if the at large plan were thrown out?

A No, sir, I think your eight-man plan is very similar to the eight-man plan I proposed. I offered this plan and the plan was not accepted.

Q Men might find this plan acceptable should they not have the choice of the at large plan?

A You will have to ask them.

MR. HALPIN: Thank you very much.

RE-DIRECT EXAMINATION

BY MR. RAGLAND:

Q You were asked earlier about the annexed area put in the Town of Lake Providence and, therefore, contributed in some way to the people's vote. Were you aware of the fact all the people within the annexed area did not equal the number of people to beat the other candidate?

MR. HALPIN: Object. He is asking if he is aware of a fact which has not been established in the record.

MR. RAGLAND: If he is aware of it he can say.

THE COURT: Are you aware of it?

THE WITNESS: Yes, sir, I am aware of it. I

can tell you almost the exact number of votes involved in that area.

BY MR. RAGLAND:

Q When Mr. Halpin asked you about the long period of discrimination against blacks over there you retorted he was correct as of 1965.

I will ask you if you personally know of any discriminated voting against office holders in East Carroll Parish since 1965 or since the advent of the Voting Rights Act?

A No, sir, I sure don't.

Q Are you aware of the fact everyone in East Carroll Parish who wants to register to vote and vote in an election is permitted to do so? In fact, he is protected in every way in that right?

A Yes, sir, I feel very strongly that is the case.

Q You have not yet had an opportunity to examine this other plan. May I ask you when you leave this witness stand to take a look at it and later on at the conclusion of this thing we can get this part of it over with.

A Yes, sir.

MR. RAGLAND: Thank you.

SIDNEY YOUNG COURT REPORTER 311 FEDERAL BLDG. SHREVEPORT, LA

JAMES C. DONOVAN,

called as a witness on behalf of the defendants, being first duly sworn by the Clerk, testified as follows:

DIRECT EXAMINATION

BY MR. RAGLAND:

Q State your name, please?

A James C. Donovan.

Q You are a resident of East Carroll Parish?

A Yes, sir.

Q Do you hold any office in East Carroll Parish?

A I am Police Juror from old Ward 2 in East Carroll Parish.

Q How long have you served as a juryman on that body?

A A little over three years.

Q Have you been a member of a committee of the whole since the time you have been on the jury?

A Right.

Q Have you attended most, if not all, of the meetings/which the matter of reapportionment was considered by the Police Jury?

A I have attended all of them.

Q Did this committee of the whole consist of the entire Police Jury consider not only this Plan No. 1 but other plans as well?

SIDNEY YOUNG COURT REPORTER 311 FEDERAL BLDG. SHREVEPORT, LA

A We considered many plans and I have studied many plans. We worked long hard hours trying to come up with a plan. We even had meetings open to the public.

Q Point out some of the things that you, as a Police Juror, considered when you came up with a voting plan. What did you think was critical or important, and not only that, what was legally required for you to come up with something in order to give a constitutionally approved plan?

A I was born and reared in East Carroll Parish. I know the area very well. My primary interest is that anybody that serves in public office should be for good government. I have experienced the ward system. Any ward system encourages bad government.

Q What do you mean by that?

A Take this area in yellow on this map and the green area. One of those wards, throughout the entire ward, there are no gravel roads whatsoever. In some of the other areas in the parish the school buses get stuck in the winter.

The yellow area has a road which traverses the levee. That is the reason of four men getting together and spending the gravey of our tax money. That is the reason I got involved in politics. I am not a politician. I have worked with some of the black people in this Court Room. We just weren't getting our tax dollars equally in East Carroll Parish. That was the reason I got in the race. That is the

SIDNEY YOUNG COURT REPORTER 311 FEDERAL BLDG. SHREVEPORT LA

reason no ward-type plan would be acceptable to me as a person. I think that is what sold it to this Jury. I went on the Jury under the ward system and served one year and I feel that if you are running at large that you will just be doing a better job for all the people in your parish and you become aware of the concern of all the people in East Carroll Parish.

Q Do you feel it made you more responsible when you looked at the whole picture? 5

A You had to if you wanted to serve another term on the Jury. Another thing, it makes better race relations as borne out by this Jury which contains two black members. Say, there are four thousand black people in Lake Providence. I got to deal with these people.

Q You think the fact that you have to deal with the facts they can vote for or against you?

A They are going to look at my acts these last four years, black or white. I think that is what makes a man get elected.

We have a very peculiar drainage system in our parish. This yellow area basically has a pumping station. Years ago they built a levee. That area needs representation under an at large plan.

Q Are you referring to the orange?

A South of the red area. This at large plan comes

SIDNEY YOUNG COURT REPORTER 311 FEDERAL BLDG. SHREVEPORT LA

nearer to the perfect plan as far as deviation is concerned because there isn't any.

Q Let me ask you this: Are you aware of the fact East Carroll Parish is predominantly black?

A Yes, I am well aware of it.

Q Did this plan seem to accommodate itself better than any other plan you considered to this fact of life?

A It is already in force. We are operating it. We have our voting precincts set up.

In my mind, and I think in the Police Jury's mind, as a whole, it has less dilution than any other plan we came by. It gives the black people in old Ward 1 in the yellow area a possible chance to elect some black representation. That is also true even in the orange, purple, brown and blue area. It assures them that if they have a man that would get out and politic and solicit the votes that he can get elected.

Q Did the other two plans submitted by the Intervenor, did they seem to preclude this possibility of election of a black in that area?

A If the voters vote black for black and white for white, you would have your representation of three people in this area.

Q What are you talking about now with three people?

A This brown area on the Intervenor's plan.

Q Is that the area you have reference to when you

SIDNEY YOUNG COURT REPORTER 311 FEDERAL BLDG. SHREVEPORT, LA

say that plan had three people?

A Yes, sir.

Q Did you discuss also the fact that these plans cut up the Town of Lake Providence into sub-districts and what was your thinking about that?

A Well, it has never been divided. My thinking is that it shouldn't be divided because it has never been done before.

Q Did you find any need or reason for the division of a little municipality in smaller units?

A Well, basically there isn't that much difference in any area there.

Q For example, could the Jury come up with any sound reason why the south central part of the little small town of Lake Providence, which is in blue, why it should have a member on the Police Jury?

A I can see no need because any of those other areas adjacent to it, there isn't any difference.

Q Same kind of people?

A - Same kind of people.

Q Residential?

A Residential.

Q Did both of their plans have subdivided areas within the confines of the Town of Lake Providence?

A Right.

SIDNEY YOUNG COURT REPORTER 311 FEDERAL BLDG. SHREVEPORT, LA

Q Could you think of one single legitimate reason --

MR. HALPIN: Object to leading the witness.

BY MR. RAGLAND:

Q Could you think of one?

A We couldn't think of any reason for dividing it. They had nothing to gain. There is very little Police Jury money that can be spent in town due to the fact that they have a governing body that levies a tax to maintain the streets. The Police Jury is basically a rural operation in our parish.

Q Did you ever consider the matter of multi-member districts in these plans?

A That was discussed and it goes back to what I said in the beginning.

For instance, say Ward 2; if I were so minded, I could take me and those three men from this brown area and get together and we could really get things done. I am an at large man and I think it is the best type of government when you are responsible to the people and responsible for their tax dollars to be spent wiser.

Q This at large plan which you supported, was it shared by other members of the Jury?

A They unanimously endorsed it.

MR. RAGLAND: Your witness.

SIDNEY YOUNG COURT REPORTER 311 FEDERAL BLDG. SHREVEPORT, LA

MR. HALPIN: No questions.

JERRY WALLEY,

called as a witness on behalf of the defendants, being first duly sworn by the Clerk, testified as follows:

DIRECT EXAMINATION

BY MR. RAGLAND:

Q Please state your name for the record?

A Jerry Walley.

Q Mr. Walley, where do you live?

A I live in Montecello in East Carroll Parish in Ward 7.

Q Is that the ward that is colored in blue?

A Yes, sir.

Q On the defendants' plan No. 1?

A Yes, sir.

Q Mr. Walley, how long have you served on the East Carroll Police Jury?

A Approximately three years.

Q During this period of time have you made either or most of the meetings on the matter of reapportionment?

A I have attended all meetings.

Q Have you had an opportunity to consider plans and

ultimately come up along with other members of your Jury with a particular plan which you have asked this Court to put in effect?

A Yes, we studied a number of plans and we came up with the at large plan now presented.

Q You will see Plan No. 1 of the plaintiff up here on the left-hand side of this larger board and you will also see what is their Plan No. 2.

Did you actually go through those plans to see if they offered something better than what you offered?

A Yes, I think we studied them thoroughly. I think we gave them great consideration.

Q In what way did you find your plan to be more advantageous than these plans and, secondly, did you find any inferiorities in this plan as compared to those and, if so, tell us what those are?

A I was appointed by the Governor. We had a straw-vote in the ward and I was No. 1 man selected by the people to be appointed by the Governor. We preferred this plan over here, the at large plan. I come from a ward of about 700 people. When the reapportionment plan was submitted this seemed strange, me coming from a small area, I wanted to run on an at large basis, but I found in East Carroll Parish that my main interest is good government regardless of race, color or creed.

SIDNEY YOUNG, COURT REPORTER 311 FEDERAL BLDG. SHREVEPORT, LA

I will go back to my ward or to Ward 1 where we have a black Jury member there. I have added approximately 60 miles of new ditches to that ward. I have added a mile of blacktop to that area. We go to Ward 1 and we added 20 or 30 miles of ditches, which we call the Henderson Loop. In my area we have added ditches and this was for black and white as well because we have black farmers that weren't getting representation.

Then we go into Ward 1, which is the ward Watson Sanders is from. We added a blacktop area east of Highway 65. We added more ditches and put gravel in that area in the last three years more than has been added in the last twenty years.

I firmly believe that geographically speaking the people feel when they can come to you regardless of color or creed and ask you for representation, then give them representation.

We have in this area several cemeteries. We graveled the cementary roads. We have a number of colored churches in this area and we maintain the driveways.

There is no way to give them representation when you have a so-called clique of four against two. It is almost an impossibility.

This is why in order to get good government you should present a man to the people who can do the job for

SIDNEY YOUNG, COURT REPORTER 311 FEDERAL BLDG. SHREVEPORT, LA

all the people equally and I think that has made for better government. This is some of the things that have been added in this small area.

MR. RAGLAND: Your witness.

MR. HALPIN: No questions.

MR. RAGLAND: If the Court please, I would like to be sworn at this time.

WILLIAM B. RAGLAND, JR.,

called as a witness on behalf of the defendants, being first duly sworn by the Clerk, testified as follows:

MR. RAGLAND: I would like to explain some offerings here, Your Honor.

Let the record show that William B. Ragland, Jr., an Assistant District Attorney from the Sixth Judicial District is testifying at this point.

At this point, I would like to explain certain charts, Your Honor, we propose to introduce in evidence and tell the Court why the charts were prepared and what they purport to show.

First, "D-1" shows a total population, total white and black according to the 1970 census. This has been submitted to opposing counsel. This

accurately represents certain information taken from the Census Rolls in 1970 concerning East Carroll Parish.

Beginning with this, which at this point I think is the foundation for the figures and statistics which it will show, I ask that it be introduced in evidence as "D-1".

Based upon these statistics, knowing that the amount of dilution is the central problem in an at large voting system because the Court is well aware at an large voting system is about the only way you can get a zero deviation in a plan. It is the only perfect zero deviation method I know of.

Realizing the most significant problem involved in trying to uphold the at large program was to convince and show by statistics to this Court that the plan offered by East Carroll Parish did not change the status of the black person in East Carroll Parish as much as the plans offered by the other parties.

There were two plans offered to us by the other parties. One of the plans just came to us and we have not had a chance to test the figures there.

"D-2" is captioned "Comparison of Percentage Change in Black Population Under Parish and Intervenor's Plan."

The only way you can get a dilution is to take the old system and compare the old system to what is about to be done by the Court.

We couldn't take the old at large system you imposed on us two and a half years ago because there would be no dilution for that plan to the present plan, so we had to take the ward system because the ward system existed prior to the Court ordering East Carroll Parish to go on an at large plan.

"D-2" takes Wards 1 through 7 of East Carroll Parish and it shows, according to the 1970 Census, the makeup of black and white proprtion in East Carroll Parish.

Going to Ward 1, the first figure is percentage of blacks. The total population is 875 people in Ward 1. The black-white ratio is 306 white and 569 black, making a percentage of thirty-five per cent white and sixty-five per cent black.

Your Honor, we took each ward and studied it in this way to see what the racial makeup was.

MR. HALPIN: Your Honor, in the interest of time saving, Mr. Ragland submitted these figures in his memorandum. I think it would be adequate for the Court to look at it in the memorandum and we can save considerable time. They are based on the original Census Bureau data.

MR. RAGLAND: Your Honor, these percentages do not appear there. Those are things I have calculated and I want to bring it to the Court's attention because I think this is the most important issue in the case as to whether

SIDNEY YOUNG COURT REPORTER 311 FEDERAL BLDG. SHREVEPORT, LA

or not the program dilutes the black population in East Carroll Parish.

I would point out that Ward 1 has a thirty-five-sixty-five ratio. Ward 2, 64.7-35.3 ration.

Ward 3, 36.2-63.8.

Ward 4, has 27.9-72.1.

Ward 5 has 33.6-66.4.

Ward 6 has 43.62-66.8.

Ward 7, 64.4-39.66.

You will notice there are only two predominantly white wards under the old system and that is Ward 7 and the other Ward would be Ward 2.

Now, we took the plans submitted by the Intervenors and we looked to see what they did with the black population of East Carroll Parish. This is what we came up with:

Ward 1 had sixty-five per cent black. The parish plan which spreads the blacks of Ward 1 and puts them with blacks of other areas of East Carroll Parish place those people in a unit which will contain 58.7 black. The plan No. 1 --

MR. HALPIN: May we point out at this time that this is a seven-member plan. We are not seriously pushing this plan at this point.

MR. RAGLAND: The primary No. 1 plan --

MR. HALPIN: I am saying I agree when there

SIDNEY YOUNG COURT REPORTER 311 FEDERAL BLDG. SHREVEPORT, LA

is a good eight-member plan in the record or nine-member plan, the Court should obviously choose those which the Police Jury traditionally had and is now proposing.

MR. RAGLAND: Your Honor, we have to prepare the case based upon what was directed to us.

May I continue to take their plan?

THE COURT: Yes.

MR. RAGLAND: Under their first plan the blacks in Ward 1 were put into a new unit. It is depicted by the green area and the blacks in Ward 1 who were formerly in a sixty-five per cent position were placed in their first plan in a 45.9 per cent position.

In their No. 2 Plan, which is the second plan, they reduced the position of the blacks in Ward 1 to put them into a new unit that had a fifty-three per cent black position.

The figures demonstrate, one, that the black man in Ward 1 who formerly had a sixty-five-thirty-five position under our plan is reduced to a 58.7, but under their plans in one case is reduced to minority status and the other slightly in majority status.

We say our plan is superior from a dilution point of view.

In Ward 2 where the blacks were

SIDNEY YOUNG, COURT REPORTER 311 FEDERAL BLDG., SHREVEPORT LA

in the minority -- there were 35.3 black. Under our plan we are going to take the blacks in that area where they did not have any political prominence before and place those in the new parish-wide voting unit constituting 58.7 per cent of the population.

The blacks in Ward 2 under Plan 1 were put in with a new unit which had 45.9 per cent black makeup and in the other plan, Intervenor's No. 2 Plan. They put those blacks into a new voting unit that had 35.0 position.

We say Ward 2 has been up-graded on the parish at large system. They have down-graded significantly in both of the plans submitted by the Intervenor.

MR. HALPIN: Let me ask a question. You hve got seven wards and one plan has got seven members and one has eight. Where is the eighth member coming from in this chart?

MR. RAGLAND: I will bring it out in a minute. It is under No. 3.

MR. HALPIN: You are talking about Plan No. 2 right there. That is the eight-member plan but you have only seven figures.

MR. RAGLAND: The figure is added right here to account for that.

SIDNEY YOUNG, COURT REPORTER 311 FEDERAL BLDG., SHREVEPORT LA

Let us move to Ward 3. Ward 3 is the red area. This area has the majority of the people of East Carroll Parish in it. In that area, according to the 1970 Census, 63.8 per cent is black.

Under the plan presented by the parish, the blacks of that area will now be put into a new voting unit in which they will enjoy 58.7 per cent relationship in the total population which is still well above the majority and dilutes them only five per cent.

Going to the next area in Ward 3, under their plan it increases the colored position from 63.8 to 72.87. What they have done, they have up-graded above the old average the people in that particular area of Ward 3 by nine percentages points, while the parish plan reduces it five percentage points. The parish plan in that particular area is four percentage points closer than is this plan.

Now, Your Honor, in the case of Ward 3 there are a couple of other areas I would like to discuss under their plan and I will get to them in just a moment.

Going to Ward 4, which is the yellow ward, it is what is known as old Ward 4.

In 1970, 72.1 per cent of the people were black in that area. Under the parish plan the people will be reduced from 72.1 ratio to 58.7, but the

SIDNEY YOUNG COURT REPORTER 311 FEDERAL BLDG. SHREVEPORT LA

plans introduced by these parties significantly reduce the Negro in that area to 44.3 in their Plan No. 1 and 48.0 in their Plan No. 2. So, in both cases, they take the black in Ward 4 and take them out of a predominantly black situation and put them in an inferior or below a fifty per cent level.

They have diluted the people in Ward 4 much more than the East Carroll plan would. 7

Going to Ward 5, it is the same story. In that area in 1970 there were 66.4 per cent of that population black. Under their two plans, under Plan No. 1 they have 44.3 per cent. In other words, the blacks in Ward 5 will be put over into a new unit where they with the others will make up 44.3 per cent of the population and in the next unit 48 per cent. In both of their plans they take a majority of blacks in Ward 5 and place them in new units which are less than fifty percent.

In Ward 6 the black population in 1970 was 56.8 per cent. The parish plan up-grades the blacks by putting them in a new unit where they are elevated two percentage points.

The first plan offered by the Intervenor would put the very same people where they would have 45.9 per cent. Under their second plan they take the same people and put them in with another unit which increases their position with seventy-six per cent.

SIDNEY YOUNG COURT REPORTER 311 FEDERAL BLDG. SHREVEPORT LA

Ward 7, where the white dominated, there were 39.6 black population in 1970.

The parish plan up-grades the black in that area. It puts the blacks in that area with other blacks which constitute 58.7 per cent of the population.

MR. HALPIN: Your Honor, I object to the relevancy. This testimony is not relevant to the plan here. It is quite obvious in an at large plan the population which elects each member is going to be the same parish-wide and whenever you cut it up in different ways you will have different percentages. Going piece by piece I see no relevancy at all to this testimony in these proceedings.

MR. RAGLAND: Your Honor, these are statistics. These are mathematical facts. This is the only way you can tell if dilution occurred.

I submit this is not an issue in this case and if these people do not choose to raise the issue of dilution, then I will wrap up the case right now because I know of no reason why we should go any further. Dilution is the sole question for this Court's solution.

MR. HALPIN: The reason I am objecting to the relevancy is that the record is getting to be quite lengthy and we are hoping to be able to complete the case today. I don't suggest Mr. Ragland is deliberately going

SIDNEY YOUNG COURT REPORTER 311 FEDERAL BLDG. SHREVEPORT, LA

to great lengths, but an effort could be made to get this data into the record without it taking up quite so much of the Court's time.

THE COURT: Have you filed a brief?

MR. RAGLAND: Yes, sir, I will submit a brief.

THE COURT: Go ahead.

MR. RAGLAND: Ward 7, which had according to the 1970 Census 39.6 per cent black under the parish plan will be put into 58.7 per cent unit and under the Intervenor's plan No. 1 those same blacks will be put in where they enjoy 49.9 per cent of the population. In this second plan they are put in a group that will have fifty-three per cent of the population of this district which they are asking you to accept and you can see in this case the parish has up-graded the position of the blacks. The parish has up-graded the position of the blacks in that district very significantly and more so than either one of their plans.

Going back to Ward 3, their plan subdivided the Town of Lake Providence and they put certain parts of the town with old wards and certain parts to go within the plan. Of course, in the same area the parish at large plan places these blacks in a 58.7 per cent position.

Under their plan Enumeration Districts 3 and 9 would have 44.3 per cent black compared to the 58.7 per cent that the parish plan casts the same blacks

SIDNEY YOUNG COURT REPORTER 311 FEDERAL BLDG. SHREVEPORT, LA

in.

In other words, their plan places the blacks in that area in 44.3 per cent, or a minority status. That is Plan No. 1.

Plan No. 2 places the same blacks in a forty-eight per cent voting unit. Then there is another little sub-section of units 7 and 8 and in there these blacks are placed in a unit that comprises 59.8 per cent of the population and that is very close, and over in the other plan they are in fifty-five per cent.

In the seventh and eighth units, going to their plan, that is the only place that deviation is closer on their plan than on the plan submitted by the East Carroll Parish Police Jury and those are the mathematical statistics.

I ask these be introduced as Exhibits "D-2" and "D-3" which shows the white-black relationship here.

I have testified to the percentage deviations and I would like to offer this as "D-3".

At this time, Your Honor, since this is the parish plan, I would like to offer it as "D-4".

MR. HALPIN: No questions.

MR. RAGLAND: May it please the Court, the School Board is here. It has its witnesses. It has its

SIDNEY YOUNG, COURT REPORTER 311 FEDERAL BLDG., SHREVEPORT, LA.

secretary and they have adopted this as its No. 1 Plan. I see no reason why we should go through the same kind of evidence with them. I would only want the record to show this very same plan and also the plan submitted by the East Carroll Parish School Board.

THE COURT: What would the sum total effect be under your plan? How many white members and how many black members would there be?

MR. RAGLAND: It is an at large plan. We can only tell you what the makeup of it is now and what the voters will do is only conjecture.

MR. HALPIN: By way of argument, Your Honor, I think the Court is well aware that under Louisiana law Acts 445 and, I think, 468 of 1968 were, of course, rejected by the Attorney General of the United States.

THE COURT: That doesn't have the force and effect of law.

MR. HALPIN: However, Your Honor, there is some weight to be given to this, that the Acts have been declared invalid by the Attorney General for the reason that they are racially discriminatory.

Of course, Your Honor refers to the Sheffield case in which the Fifth Circuit said under the circumstances of that case the Court would go ahead and approve some sort of at large plan. However, there is a

SIDNEY YOUNG, COURT REPORTER 311 FEDERAL BLDG., SHREVEPORT, LA.

significant footnote in the Sheffield case, of which the Court is aware, where they indicated there was no racial data in the record. However, everybody stipulated the parish is only ten per cent black.

This parish has a high black percentage and there is a long history, which no one denies, of racial discrimination in voting, and so forth. Of course, they say they don't discriminate any more and I am sure that is mostly true. But because of the long history of racial discrimination --

MR. RAGLAND: Your Honor, I thought we were going to try our case and then argue.

Your Honor, I concluded my case.

MR. HALPIN: May I make an opening statement?

THE COURT: All right.

MR. HALPIN: Our position is an at large plan with a parish of this particular history, there is no question it has a racially discriminatory effect on voting. They have already testified there were two black members who were elected, but they were elected when the parish was not running at large and I suggest to the Court if they were changed back to at large that blacks would not be elected.

We will put on evidence in regard to the at large scheme to show it has a racially discriminatory effect in East Carroll Parish.

SIDNEY YOUNG COURT REPORTER 311 FEDERAL BLDG. SHREVEPORT, LA

We remind the Court of the Connor case which rejected large multi-member districts and, of course, that is what an at large plan is.

THE COURT: In that case the overall percentage of population was in favor of the whites and not in favor of the blacks.

MR. HALPIN: In Madison Parish, the Court ruled an at large plan was racially discriminatory and I see no difference in this case.

THE COURT: The Board came in with another plan.

MR. HALPIN: We have witnesses to show many ways in which the parish can be divided up with only minor deviations in which the circumstances are not racially discriminatory.

I suggest an at large plan, even though there is a majority of blacks, is racially discriminatory because of the long history of racial discrimination in voting.

THE COURT: Right now you have more blacks registered to vote than you have ever had.

MR. HALPIN: However, the Court is well aware of a political organization and political experience and due to the past discrimination in East Carroll Parish blacks are lacking in political experience -- lacking in voter experience -- lacking in political organization.

SIDNEY YOUNG COURT REPORTER 311 FEDERAL BLDG. SHREVEPORT, LA

We suggest an at large plan is also racially discriminatory to the extent the Police Jury knows full well if blacks organized in East Carroll Parish-wide that they couldn't do it and the reason why they can't do it is because that organization doesn't exist. The black people have only a five year existence and the white incumbents have their magic. Any time you place this at large system in effect it is racially discriminatory.

THE COURT: Let us take a short recess.

(SHORT RECESS)

THE COURT: Proceed, Mr. Halpin.

WILLIAM JEFFERSON,

called as a witness on behalf of the plaintiffs, being first duly sworn by the Clerk, testified as follows:

DIRECT EXAMINATION

BY MR. HALPIN:

Q State your name for the record?

A William Jefferson.

Q What is your occupation?

A Law student.

Q Are you a senior in law school?

SIDNEY YOUNG, COURT REPORTER 311 FEDERAL BLDG., SHREVEPORT, LA.

A Right.

Q At what law school?

A At Harvard University Law School.

Q Are you now assisting me in my law office?

A Yes, I am.

Q Where were you born and raised, Mr. Jefferson?

A East Carroll Parish, just outside of Lake Providence.

Q Have you lived there all your life except the time you were going to school?

A Yes, I have.

Q How old are you now?

A Twenty-four.

Q Are you generally familiar with the politics, geography, and so forth, of East Carroll Parish?

A Yes.

Q You heard the testimony of other witnesses to the effect that the at large system of electing Police Jurors and School Board members in East Carroll Parish would not be racially discriminatory. Is that your opinion?

A No, it is not. It is just the opposite.

Q Could you generally tell us why an at large system of election in East Carroll Parish would have an ill effect upon black voting in the parish?

SIDNEY YOUNG, COURT REPORTER 311 FEDERAL BLDG., SHREVEPORT, LA.

A My reason has a basis in the history of racial discrimination in voting practices in East Carroll Parish.

As stated before, prior to 1960, there weren't any registered black voters in the parish in 1960 and 1961 and that is when people decided they were going to do something about it.

THE COURT: The Court is familiar with that and there is no need to recite that. The Court issued an injunction against the Registrar for refusing to register any Negro on account of his race.

BY MR. HALPIN:

Q As a result of that history of voter discrimination, was there any black political organization or movement in the early sixties?

A Very small.

THE COURT: Charles Atlas was elected back there, wasn't he?

THE WITNESS: He is serving his second term as a School Board member. He was not elected back there.

THE COURT: When did he begin his second term?

THE WITNESS: I think two years ago.

THE COURT: That means he was elected, roughly, six years before that which would have been 1962.

SIDNEY YOUNG COURT REPORTER 311 FEDERAL BLDG. SHREVEPORT, LA

MR. HALPIN: Your Honor, we will correct that later. In fact, it was around 1968 the first time he was elected.

THE WITNESS: I am sure it wasn't in the early sixties.

BY MR. HALPIN:

Q Is there a good parish-wide black political organization in East Carroll Parish?

A No such organization. The organization there is very poor and still operates from a very small corps of people.

Q When I say "organization", I mean generally. Are the voters organized parish-wide?

A They have great difficulty in getting the vote out and there is even greater difficulty in getting the black voters in any particular direction. Our people just aren't at this point politically sophisticated enough to grasp the kind of power they have if they were to vote in a manner which would give them the most information.

Q What is the reason for this present lack of sophistication of organization among the voters?

A The reason is they have not had the political experience.

Q Given this lack of political experience and

organization, how would an at large plan such as presently exists affect -- what would be the result of such an election at large?

THE COURT: No one knows that.

MR. HALPIN: I would like to ask his opinion. The entire Police Jury gave their opinion.

MR. RAGLAND: That is because he solicited the first opinion from the first witness and we followed through on the same question.

MR. HALPIN: Is the Court ruling I cannot get Mr. Jefferson's opinion?

THE COURT: Let him go on and give it. I know what the answer is going to be.

BY MR. HALPIN:

Q Please state what you believe the effect of the at large system will be.

THE COURT: The whole question of the one-man one-vote was to make it possible for people to do so. Whether or not because of historical reasons they are politically unsophisticated does not keep them from getting enough smart people to organize and put on a concerted drive, and with 58.7 of the people in that parish being black I see no reason on earth why they couldn't elect every member of the School Board and every member of the Police Jury.

SIDNEY YOUNG COURT REPORTER 311 FEDERAL BLDG. SHREVEPORT LA

MR. HALPIN: The whole question is a question of a long history of discrimination in voting and the voters are extremely reluctant to get out and vote. You indicated the Registrar was enjoined, but still they are intimidated --

MR. RAGLAND: Your Honor, I object to that and resent it and ask it be stricken from the record. That cannot be proved from one single witness.

THE COURT: I don't think it can. If anybody says so, I wouldn't believe it. They have the full power of the Federal Court behind them. If there is any one who interfers with the voting process, that person will be held in contempt.

MR. HALPIN: I am not saying it is present forceable intimidation. I am saying as a result of being intimidated for such a long time these people are still scared, if you will, and it is still very difficult to get people to vote in that parish.

THE COURT: That is pure theory.

MR.HALPIN: The Police Jury knows that with an at large plan no black will be elected.

THE COURT: That is pure theory. There is no Court case holding in the Fifth Circuit or the Supreme Court or otherwise that because of any past political history you have got to give that consideration.

SIDNEY YOUNG COURT REPORTER 311 FEDERAL BLDG. SHREVEPORT LA

MR. HALPIN: I am saying the at large scheme builds upon the effects of past discrimination, for instance, in school cases.

THE COURT: That is an argument you are making with which I thoroughly disagree.

MR. HALPIN: Nevertheless, that is the argument I am making.

THE COURT: You might as well pass on to some other subject because I do not believe it.

MR. HALPIN: Is the Court ruling I may not put on evidence to that effect?

THE COURT: I have said I do not believe it.

MR. HALPIN: I can put on evidence.

BY MR. HALPIN:

Q Mr. Jefferson, is it true in East Carroll Parish, in your opinion, because of the long history of racial discrimination in voting and other areas that an at large plan would have the effect of completely preventing blacks from being elected to political office?

MR. RAGLAND: I object to the question as opinion.

THE COURT: Objection sustained.

MR. RAGLAND: He is not qualified as having sampled the opinion of that parish. He is not qualified as

SIDNEY YOUNG, COURT REPORTER 311 FEDERAL BLDG. SHREVEPORT, LA

a political expert, in any sense of the word in East Carroll Parish.

THE COURT: I sustain the objection.

BY MR. HALPIN:

Q Now, Mr. Jefferson, have you examined other plans of other ways of reapportioning East Carroll Parish which would not dilute the black vote but which would achieve close population equality?

A Yes, I have.

THE COURT: If we accept your argument as correct, and I don't think it is, any such plan would have the same background.

MR. HALPIN: Yes, Your Honor. The point is with the parish divided into smaller segments with the weak political organization that there is, it is easier to organize small areas at a time than it is to organize the whole parish at one time.

THE COURT: You are still going to have to organize the whole parish to get a majority on either Board, either the School Board or the Police Jury.

MR. HALPIN: Perhaps not the whole parish. At any rate, I would like to go ahead and present my plan in the record.

THE COURT: Go on and present your plan. We are going to quit at six o'clock.

SIDNEY YOUNG, COURT REPORTER 311 FEDERAL BLDG. SHREVEPORT, LA

BY MR. HALPIN:

Q Could you briefly describe the plan which you have drawn in terms -- maybe I could lead the witness -- District 1, which is the red area, has a population of 1,445 total population, one representative, and is forty-six per cent black.

District 2 has two representatives and it is 61.8 black.

District 3 has four representatives and it is sixty-five per cent black.

District 5 has two representatives and it is forty-three per cent black; is that correct?

A That is correct.

Q Is it true that you used enumeration districts for most of this plan?

A Yes, I did.

Q Is it also true for one portion of the plan a enumeration district was split?

A That's right.

Q Which enumeration district was that?

A Enumeration District 9.

Q You included a small portion of Enumeration District 9 into your new District 2?

A That is correct.

Q Do you know approximately how many houses are in

that section of Enumeration District 9 which was added?

A Approximately ten or eleven.

Q Did you, in fact, go out and count those houses?

A Yes, I did.

Q Did you use the basis of an average of 3.5 people per house in arriving at the figure for this particular district?

A Yes, sir.

Q Does that plan show a total deviation of 5.7 per cent?

A Yes, it does.

MR. HALPIN: No further questions.

CROSS EXAMINATION

BY MR. RAGLAND:

Q Mr. Jefferson, I feel it is imperative to ask you a couple of questions to counter what has gone into this record about all the bad things that have gone on in East Carroll Parish.

Did you not say you grew up in East Carroll Parish under the circumstances that have been complained of?

A Yes, sir.

MR. RAGLAND: Let the record reflect that the witness is black.

BY MR. RAGLAND:

Q Is that not true?

A That is true.

Q Are you a registered voter in East Carroll Parish?

A Yes, sir.

Q Have you yourself ever felt any of this fear expressed by your counsel?

A Yes, sir, I have.

Q Will you explain to me, as a black man who attends Harvard Law School, exactly how this fear overcomes you?

A I have attended Harvard Law School only two years. If you are referring to my present situation, the answer is no, I am not fearful. For the period prior to that, the answer is yes.

Q Wouldn't you say this change in feeling came about in there at the time the 1965 Voting Rights Act came in place? Didn't this eliminate these fears in you?

A Not me personally. As I grew older, yes.

Q In East Carroll Parish you have been able to grow up. Have you registered or did you register when you came of age and have you always been permitted to vote?

A Yes.

Q And you presently attend Harvard Law School?

A Yes.

Q You naturally have some knowledge of these reapportionment cases. Are you not familiar with the fact that

SIDNEY YOUNG COURT REPORTER 311 FEDERAL BLDG. SHREVEPORT, LA.

one of the significant things -- it is the crucial thing -- that the deviation of population is one of the most important reasons?

A Primary consideration.

Q Do you not admit the East Carroll Parish plan is a zero deviation plan?

A Any at large plan is.

Q Do you not admit either one of the two plans submitted by the Intervenor contains a higher deviation than does this one?

A Each plan contains a higher deviation than does yours.

Q In that respect, under the jurisdiction and you being a Harvard law student -- as you understand it -- wouldn't you say this plan is superior?

MR. HALPIN: Your Honor, I object to taking a person on the stand and having a legal argument with him.

THE COURT: He is attempting to express an opinion as a senior law student. Objection overruled.

BY MR. RAGLAND:

Q Will you not concede this plan with zero deviation, if the jurisprudence is correct on the point, is better than either one of those two?

A No, sir.

SIDNEY YOUNG COURT REPORTER

Q Will you tell me why? Leave out the dilution?

MR. HALPIN: If Your Honor please, it is an unfair question to tell a witness you have got to tell me why and leave out the racial dilution factor. Obviously, the point being made here is that the thing that is wrong with the plan is that it is racially discriminatory. Obviously an at large plan has a zero deviation.

BY MR. RAGLAND:

Q You said earlier the blacks in that area have a poor political organization; they are not politically sophisticated and they lack political experience. That is the real reason why you say this plan dilutes the black position, is it not?

A Yes, it is.

Q Let us go first to the lack of political experience. Isn't this really a conclusion on your part that due to the political experience this plan is discriminatory? Isn't that a personal conclusion you have drawn?

A No. Every conclusion is personal to an extent. I have observed the political goings-on there and, in fact, I have been affiliated with the grass roots organization and I have observed it firsthand.

My mother has been very closely associated with this kind of thing and back in the 1960's she went to Shreveport

SIDNEY YOUNG, COURT REPORTER, 311 FEDERAL BLDG., SHREVEPORT, LA.

and Monroe and helped people register there and I have been in very close observation of these things.

Q These are personal observations which you will admit are not backed up by objective facts and data?

A That is not right.

Q Tell me what objective facts and data you base that conclusion on?

A I tried to explain my having observed the political goings-on of the grass roots organization.

THE COURT: Is that a Negro voting organization?

THE WITNESS: Yes, Your Honor. The efforts at registration and voter education especially have met with great difficulty and little success.

In the last city-wide election for the Board of Aldermen there was places where black men in substantial majority lost and the problem was, as I see it, a lack of political sophistication.

BY MR. RAGLAND:

Q Mr. Jefferson, it is not because of this plan but it is because of a condition that exists within the blacks themselves, isn't it?

A As a practical matter, given the situation the blacks are in, it is the plan that is going to cause the

SIDNEY YOUNG, COURT REPORTER, 311 FEDERAL BLDG., SHREVEPORT, LA.

result I am complaining of.

Q You are contradicting yourself. Didn't you say it is lack of political sophistication and very poor political organization -- lack of political experience. When you mention those qualities in the blacks -- you never did say those shortcomings were due to this plan?

A This plan, i n light of that discrimination, makes it virtually impossible for a black man to be elected.

Q That is a personal conclusion you have drawn?

A That is a conclusion I have drawn based on my concept of what is going on in East Carroll Parish.

Q Have you been out of East Carroll Parish for the past couple of years more than you have been in it?

A Certainly I have.

Q You have been away at school?

A I have been away at school nine months out of the year but I come home off and on and for the summer.

Q Let me go on. Wouldn't you say these two plans contain multi-member districts?

A They do.

Q Are you personally aware of the case law which treats multi-member districts and why they are not good?

MR. HALPIN: Object, Your Honor. It is a conclusion put to the witness the subject of which is not necessarily accurate.

SIDNEY YOUNG COURT REPORTER 311 FEDERAL BLDG. SHREVEPORT, LA

THE COURT: He is on cross examination.

THE WITNESS: I don't know anything that says multi-member districts are seriously objectionable constitutionally.

BY MR. RAGLAND:

Q Are you aware of the recent Hinds County decision and the implication of that decision?

A Yes, I am.

Q Do you still say there is nothing objectionable?

A And the Whitcomb decision.

Q The plans have not only multi-member districts but they have districts of a lesser number of representatives than the multi-member districts?

A Slightly.

Q Do you concede East Carroll Parish does not have a multi-member district as defined by the jurisprudence?

A You have nine persons running and they are elected parish-wide.

Q Are you aware of the language in the Chavis case which says that multi-member districts, where there are no other multi-member districts in the unit or lesser representative districts in the unit, it is not bad at all?

A I am not aware of it.

MR. HALPIN: This is highly irregular, Your

Honor.

BY MR. RAGLAND:

Q Do you not concede that the East Carroll Police Jury plan assures geographical representation better than your plan?

A I see what you mean. I will agree with that.

Q Let us also go to this point: Have you ever considered the advantage of all people voting on the officials of an area? Have you ever thought about the advantages of that over the old ward system that originally existed?

A I have considered that.

Q Do you think that the old ward sub-district system for a small 12,884 parish population over there, that that system is superior to one where these officials are duty-bound to all the people?

A Yes, I do.

Q Tell me why?

A In a theoretical kind of sense and taking this thing out of context of our actual situation in East Carroll Parish it may be that argument had some validity, but given our situation and the remarks I made earlier about the matter of political sophistication, and so forth, no, I disagree with that. That can't be taken as a primary consideration in a geographical situation. It might make a given plan a little bit better. Certainly that falls second, third,

SIDNEY YOUNG COURT REPORTER 311 FEDERAL BLDG. SHREVEPORT, LA.

fourth or fifth to the one-man one-vote principle and the dilution consideration.

THE COURT: Didn't Whitcomb vs. Chavis hold expressly a multi-member district is perfectly valid unless it is shown to be discriminatory?

MR. RAGLAND: Yes, sir.

BY MR. RAGLAND:

Q Did you see me present those figures based upon the old ward system?

A Yes, I did.

Q Do you personally know of a better way to figure whether or not a black person's position in the voting structure has been diluted or not diluted better than that system?

A Yes, I do.

Q Will you tell me what that is?

A The system by which you have the opportunity to elect an official.

Q Based upon what you testified to so far, is it not true with this background what you have done or what you have assisted in doing is to bring plans to this Court which, in effect, guarantee a particular race or public bias?

A Of course, they don't guarantee. What they do is give them a fair opportunity to be represented on the Jury in

SIDNEY YOUNG COURT REPORTER 311 FEDERAL BLDG. SHREVEPORT, LA.

accordance with the population.

Q Are you aware the percentage is 58.7 to about 41.3?

A About that.

Q Do you know of any fairer way to let the people elect with an absolute proportionate position such as that?

A Yes, I do. It is represented right here.

Q Won't you admit you have actually made the center part of East Carroll Parish, using the Town of Lake Providence where there is a very large concentration of blacks, you have taken that as a hub and built on to it and you have made districts in those areas which pretty well assures a black will be on there?

A We followed Enumeration District lines. Of course, one of our considerations was the black people living in East Carroll Parish should be represented on the Board and the district should be drawn so that that representation was to some extent assured.

Q In other words, what you did, you brought a plan to this Court which, in your own words, assured representation of one particular race?

A To a significant extent it is drawn to assure black people are represented on the various bodies.

Q Isn't it predicated on the assumption no black can be elected under present circumstances?

A That's right.

SIDNEY YOUNG, COURT REPORTER, 311 FEDERAL BLDG., SHREVEPORT, LA

Q That is a personal belief and you cannot bring any objective proof to this Court?

A I think I stated the proof that I have on this issue.

THE COURT: Do you know, as a matter of fact, that if any intimidation has occurred in prior years prior to the issuance of this Court's injunction in the early sixties -- long before the Voting Rights Act -- whoever did that would be hauled before this Court after an investigation by the FBI or a complaint made and cited for contempt?

THE WITNESS: I understand that, Your Honor.

THE COURT: And the extent of imprisonment is unlimited?

THE WITNESS: Yes, sir.

Could I say this: That the political situation of the blacks in East Carroll Parish is very closely tied with the personal and business relations with white people and intimidation, per se, while it may not exist that certainly in their relations they depend on these relations for their subsistence.

THE COURT: Do you realize that a suit filed in this Court by Charles Atlas because cotton ginners would not gin his cotton and grain dealers would not grind his grain that a consent decree against all defendants named -- all people he had dealings with -- would not do that?

SIDNEY YOUNG, COURT REPORTER, 311 FEDERAL BLDG., SHREVEPORT, LA

Don't you think that is about as strong a remedy as any person could possibly have?

THE WITNESS: In a theoretical sense, Your Honor, it is a strong remedy.

THE COURT: Theoretically, all you have to do is get the evidence and come before this Court and we will find them in contempt.

THE WITNESS: As a practical matter, many acts of intimidation go unprotested.

THE COURT: Whose fault is that? This Court can't protect them.

THE WITNESS: I understand that. That is because of the long record of discrimination and especially old people have resigned themselves to that.

THE COURT: Notwithstanding the Grass Roots Organization to educate the people in the past five years?

THE WITNESS: I don't think that long.

THE COURT: You admit there is a regular political organization in East Carroll Parish known as the Grass Roots for the express purpose of electing Negro people to public office?

THE WITNESS: No, Your Hnnor, not the express purpose. It serves that purpose as well as a number of others.

THE COURT: Why don't you offer these maps

SIDNEY YOUNG, COURT REPORTER, 311 FEDERAL BLDG., SHREVEPORT, LA.

in evidence.

MR. HALPIN: Is there any objection to entering these maps?

MR. RAGLAND: I have no objection.

FRANCIS JOSEPH ATLAS, SR.,

called as a witness on behalf of the plaintiffs, being first duly sworn by the Clerk, testified as follows:

DIRECT EXAMINATION

BY MR. HALPIN:

Q Would you please state your name for the record?

A Francis Joseph Atlas, Sr.

Q Is it Reverend Atlas?

A Reverend.

Q Reverend Atlas, is it true you have lived in East Carroll Parish all of your life?

A Yes.

Q Have you been active in civil rights movements, and so on, in East Carroll Parish?

A Yes.

Q For the record, you are black; is that right?

A Right.

Q Are you an elected member of the School Board of East Carroll Parish?

SIDNEY YOUNG, COURT REPORTER, 311 FEDERAL BLDG., SHREVEPORT, LA.

A I am.

Q What date were you elected to that position?

A As near as I can guess, 1966 I believe it was.

Q Were you elected parish-wide -- at large?

A No, I wasn't.

Q Were you elected from a ward?

A Yes.

Q You were elected before the change over to the at large system?

A Yes.

Q Did you vote for or against the proposal to make the parish governing bodies at large?

A I voted against the proposal. I voted against one proposal and I abstained from voting on another one.

Q What is your opinion now as to the effect that the at large plan of reapportionment will have on black people getting elected in these positions in East Carroll Parish?

A I feel that in a parish-wide election they will have a slighter chance to be elected than they would on the basis of the original ward system.

Q Is it your opinion that the at large system was designed to make it more difficult for blacks to be elected in the parish?

A It is an advantage in there that suits the others.

MR. HALPIN: That's all.

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CROSS EXAMINATION

BY MR. RAGLAND:

Q Reverend Atlas, you have served now five or six years on the East Carroll Parish School Board, have you not?

A Correct.

Q As far as you can remember, you have not come up for re-election under the at large system, have you?

A No, I haven't.

Q So you really have no personal experience yourself with running under the at large program that all the other members of your School Board are asking this Court to adopt; is that not correct? You have never run under the at large system?

A I have never had the chance yet.

Q Whatever your thought is about what your chances are is purely a personal opinion, is it not?

A It isn't personal but observation from statistics from records on running at large.

Q Would you tell me what statistics you have reference to?

A I have reference to when there is two running, one black and one white, all whites stay on one side and the blacks split up and the whites are always elected.

THE COURT: Is there any way this Court

can prevent the blacks from splitting up?

THE WITNESS: That is a difficult question to answer. We are people that are tied in. A lot of times we work for you. You have a lot of influence. You have power from the economic standpoint and lots of times people think where their bread comes from is more important than voting and it is difficult to say.

THE COURT: When a person goes in the ballot box he goes in there in complete secrecy?

THE WITNESS: Your Honor, let me tell you something. I couldn't say under no system what you said is true and get a man I know to believe in. He believes somehow somebody will find out how he voted.

THE COURT: There is nothing this Court can do about that.

MR. RAGLAND: No further questions.

MR. HALPIN: We close our case and urge, based on the Sheffield case, the indication is the Court should not be able to allow this School Board and Police Jury to remain at large and the fact that Act 445 has been invalidated, the Court in Sheffield said the Court only had the discretion where there was no significant black population in the parish. We suggest the Court doesn't have the power to allow the School Board to reapportion under a State law which has been struck down under Section 5 as a law which

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is racially discriminatory.

We respectfully submit this at large program and its effect in East Carroll Parish is, in fact, racially discriminatory. We suggest there are other satisfactory plans so far as the one-man one-vote goes in dividing the parish in several districts which would not have the racially discriminatory effect that the at large plan has.

THE COURT: Because of the fact that this is the only case I have seen where there is a zero deviation, which is what the one-man one-vote principle calls for, that is, perfection; because of the fact that the overall population of the parish is 58.7 per cent black and because we think that the ideas expressed by the first witness of the Intervenor on the stand have no validity -- all of that has been overcome by the Voting Rights Act of 1965 and by the injunctions issued by this Court in the past which are still outstanding, we approve the plan as submitted by the Police Jury and the School Board.

Court is adjourned.

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CERTIFICATE

I, Sidney Young, Official Reporter, United States District Court, Western District of Louisiana, do hereby certify that the above and foregoing 80 pages of typewritten matter contain a true and correct reporting and transcription of the proceedings had at the time and place as hereinbefore set out on Page 1.

IN WITNESS WHEREOF I have hereunto affixed my signature at Shreveport, Louisiana, on this the 18th day of October, 1971.

Sidney Young
Official Reporter
U.S. District Court
Western District of Louisiana
Shreveport, Louisiana

SIDNEY YOUNG, COURT REPORTER 311 FEDERAL BLDG., SHREVEPORT, LA.

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July 30, 1971

U. S. DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
FILED
AUG 2 - 1971
ALTON L. CURTIS, CLERK
By: D

3927

Honorable Ben C. Dawkins, Judge
Federal Building
Shreveport, Louisiana

Dear Judge Dawkins:

Enclosed herewith please find proposed decree which I submit formalizes the oral order rendered by you in Monroe yesterday regarding the reapportionment of East Carroll Parish.

I would suggest that you review this proposed order in detail before executing it to make sure that it does indeed conform to your order of yesterday.

With best wishes, I am

Yours very truly,

William B. Ragland, Jr.
Assistant District Attorney

WBRjr/hh
Enclosure

Supreme Court, U. S.
FILED
FEB 25 1974
MICHAEL RODAK, JR. CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

NO. 73,861

EAST CARROLL PARISH SCHOOL BOARD
AND EAST CARROLL PARISH POLICE JURY,

Petitioners,

V.

STEWART MARSHALL,

Respondent.

RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES FIFTH CIRCUIT COURT OF APPEALS

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES ----------	i
QUESTION PRESENTED ----------	2
STATEMENT OF THE CASE ----------	2
REASONS FOR DENYING THE WRIT	
I. The decision below is consistent with and even mandated by this Court's decision in White, supra, and after this Court's decision in White, supra, there is no question remaining in the present case of a magnitude to warrant this Court granting review by certiorari ----------	6
II. The Court below properly determined that the District Court had applied an improper legal standard in evaluation of dilution, and that the District Court was clearly erroneous in finding that at-large election did not dilute the voting strength of black voters in the parish ----------	8
CONCLUSION ----------	9
CERTIFICATE ----------	10

i

TABLE OF AUTHORITIES

CASES CITED	PAGE
LeBlanc v. Rapides Parish Police Jury, 315 F. Supp. 783, 788-9 (1970) ----------	3
United States v. Manning, 205 F. Supp. 172 (1962) ----------	2
Whitcomb v. Chavis, 403 U.S. 124 (1971) ----------	4,6
White v. Regester, ____U.S. ____, 37 La.Ed.2d 314 (1973) ----------	4,6

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

NO. 73-861

EAST CARROLL PARISH SCHOOL BOARD,
AND EAST CARROLL PARISH POLICE JURY,

Petitioners,

V.

STEWART MARSHALL,

Respondent.

RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES FIFTH CIRCUIT COURT OF APPEALS

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Respondent prays that this Court deny the petition for writ of certiorari sought by petitioners to review the decision of the United States Court of Appeals for the Fifth Circuit, en banc, on rehearing, rendered on September 12, 1973, reversing its previous decision entered on August 3, 1972.

QUESTION PRESENTED

Whether under the totality of circumstances of this case at-large elections in East Carroll Parish operate to minimize or cancel out the voting strength of racial or political elements of the voting population.

STATEMENT OF THE CASE

Prior to 1968, members of the East Carroll Parish Police Jury and School Board were elected by the electors of the wards of the parish. Due to vastly increased black voter registration[1] as a result of federal registration in the parish under the Voting Rights Act of 1965, blacks gained a voting majority in several wards, and for the first time since Reconstruction, blacks were elected to the Police Jury and School Board. In 1968 a change was effected from the ward system to at-large elections, resulting in a white voting majority controlling election of all members of both bodies.

The original 1968 Complaint was a sweetheart lawsuit filed by a white plaintiff and resulted in an order entered upon stipulation which declared the bodies malapportioned, and

---

[1] As of 1961, no black person had been registered to vote in East Carroll Parish since 1922. By 1971, there were approximately 2,899 black voters, and 3,342 white voters. See United States v. Manning, 205 F. Supp. 172 (1962).

an order entered upon consent of all parties instituting the at-large scheme of elections.

By letter of August 7, 1970, the Attorney General of the United States notified the parish of his opposition under Section 5 of the Voting Rights Act of 1965 to implementation of the at-large elections for the August 15, 1970 School Board primary.[2] Nevertheless, the petitioners conducted these elections pursuant to the at-large plan.

In response to the District Court's letter of February 17, 1971, directing petitioners to submit a plan in accordance with 1970 Census, defendants submitted the at-large plan. At this point, your respondent, Stewart Marshall, a black citizen of East Carroll Parish, moved to intervene and was permitted to do so by order of May 10, 1971. Your respondent's Complaint in Intervention charged that the at-large plan was an inappropriate equitable remedy and violative of the Fourteenth and Fifteenth Amendments to the United States Constitution, and the Voting Rights Act of 1965.

A full hearing was conducted on July 29, 1971, at which your respondent introduced extensive evidence of the long and continuing discrimination against and disenfranchisement

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[2] The Attorney General also indicated his disapproval of the at-large scheme in East Carroll Parish by letter of September 10, 1969. This letter is reprinted in the opinion in LeBlanc v. Rapides Parish Police Jury, 315 F. Supp. 783, 788-9 (1970).

of blacks in East Carroll Parish, the context in which the change to at-large voting was effected, of the racially discriminatory intention and effect of the at-large plan, and generally those elements of proof outlined as necessary to meet plaintiff's burden under such decisions as Whitcomb v. Chavis, 403 U.S. 124 (1971) and White v. Regester, _____U.S. _____, 37 L.Ed.2d 314 (1973).

The District Court initially again approved the at-large plan on grounds that the plan had a zero deviation from the one-man, one-vote norm, and because a majority of the population of the parish is black. However, on March 27, 1972, after your respondent had noticed appeal to the Fifth Circuit, the District Court withdrew its approval of the at-large scheme and ordered a return to a division of the parish into election districts, finding, inter alia.

> 3. That prior to at-large elections, the single-member ward system of elections has produced two Black members of the Police Jury and one Black member of the School Board.
>
> 4. That although at-large elections in East Carroll Parish may not entirely preclude the possibility of a Black being elected, it operates to the disadvantage of Blacks, and places a serious and unnecessary handicap to effective participation of the newly enfranchised Black citizens of East Carroll Parish.
>
> 5. The fact that East Carroll Parish did not attempt to change to at-large elections until

> blacks were registered and had been elected from certain wards, supports the court's finding that at-large elections in East Carroll Parish are racially discriminatory in purpose or effect.
>
> 6. Although many parishes in Louisiana have attempted to change to at-large elections after Blacks were registered in significant numbers due to the Voting Rights Act of 1965, none of these attempts have passed federal scrutiny. In all instances known to this Court, the at-large plans have been struck down either by the Attorney General of the United States acting pursuant to Section 5 or by the courts.
>
> * * *
>
> 8. Given the long history of disenfranchisement of Blacks in East Carroll Parish, the timing of the at-large plan, and the serious obstacles it places to the election of Blacks in East Carroll Parish, the Court finds that the at-large plan is violative of the Fifteenth Amendment to the United States Constitution.

On appeal, however, the Fifth Circuit panel found the District Court to be without jurisdiction to enter its March 27, 1972 order finding the at-large elections to be racially discriminatory. The panel further affirmed (with a dissent) the District Court's August 2, 1971 judgment. The United States Court of Appeals for the Fifth Circuit by order of November 17, 1972 granted respondent Marshall's Motion for Rehearing en banc,

and on September 12, 1973 entered an opinion and order finding that at-large elections in East Carroll Parish were racially discriminatory. The en banc Court found specifically that your respondent as plaintiff below had met the burden of proof under Whitcomb, supra, White, supra, and related decisions. It is this en banc decision which petitioners seek to have this Court review.

REASONS FOR DENYING THE WRIT

I. The Decision Below is Consistent with and even Mandated by this Court's Decision in White, supra, and after this Court's Decision in White, supra, There is No Question Remaining in the Present Case of a Magnitude to Warrant this Court Granting Review by Certiorari.

The Fifth Circuit en banc decision merely takes the clear ruling of this Court in White, supra, Whitcomb, supra, and related decisions, and applies those guidelines to the circumstances of the present case. Petitioners' reliance upon the findings of the District Court is misplaced in view of that Court's later withdrawal of its findings and issuance of new findings supporting the proposition that at-large election in East Carroll Parish operated to minimize and cancel out the vote of black citizens of that parish.

Petitioners would have this Court believe that the en banc decision below establishes a per se rule of unconstitutionality of at-large elections. This is simply not true. The en banc decision clearly indicates that it is not developing a per se rule (Slip opinion, p. 11), but rather is judging the merits of this case on its own bottom and under the particular circumstances present in East Carroll Parish.

If anything, the en banc decision counters a per se rule by the District Court and a majority of the Fifth Circuit panel, which had held that "an at-large scheme cannot work a dilution of black voting strength where blacks, though constituting a minority of registered voters, comprise a majority of the total population of the parish" (Slip opinion, p. 2, en banc decision). A per se rule that where blacks constitute a majority of the population, dilution of their vote cannot occur would result in blacks being disenfranchised in those parishes and counties in the South where they are most heavily concentrated. Data before the Court below indicated that there are fourteen counties in Mississippi and eight parishes in Louisiana in which blacks comprise a majority of the population but that in none of those parishes or counties do blacks comprise a majority of registered voters. To allow a per se rule such as that suggested by the District Court or by the panel of the Fifth Circuit (that where blacks constitute a majority of the population, there can be no dilution of their vote), would be an open license for those bent upon disenfranchising blacks to establish at-large elections in those counties and parishes, and thereby ensure continued white supremacy in the elections for the governing bodies of those parishes and counties. Those bent upon disenfranchisement of blacks are aware of the obvious political reality that registered voters rather than population represents political power. The Fifth Circuit en banc decision also recognizes this political reality, and provides a remedy to this disenfranchisement which is equal to it in sophistication.

Accordingly, this case is consistent with prior decisions of this Court, and does

not present a question of a magnitude to justify this Court's exercise of its supervisory jurisdiction.

II. The Court Below Properly Determined that the District Court had Applied an Improper Legal Standard in Evaluating Dilution, and that the District Court was Clearly Erroneous in Finding that At-large Election did not Dilute the Voting Strength of Black Voters in the Parish.

East Carroll Parish in its petition asserts, and would have this Court believe, that the en banc decision below "did not find the District Court's finding to be 'clearly erroneous' or 'manifest error' as required under Rule 52 of the Federal Rules of Civil Procedure" (Petition, p. 16). This assertion is entirely false and cannot be justified by any possible reading or interpretation of the en banc decision. The en banc ruling stated clearly that:

> Marshall urged several grounds for reversal on appeal: first that the district court was without power to order at-large elections because under Section 5 of the Voting Rights Act of 1965, the Attorney General of the United States had tendered an objection to the Louisiana Statutes which prescribed at-large elections for police juries and school boards; second, that the district court applied an improper legal standard in evaluating dilution; and third, that the district court was clearly erroneous in finding that at-large elections do not dilute the voting strength of black voters in the parish. All three

> contentions were rejected by the panel.
>
> On rehearing, Marshall challenged the panel's disposition on all three grounds. Since we find his last two challenges meritorious, we need not consider his first contention concerning Section 5 of the Voting Rights Act of 1965.
>
> (Emphasis supplied, notes omitted, Slip opinion, p. 5,6)

Further, it should be noted that defendants' heavy reliance upon the District Court's finding of fact in its first ruling is misplaced in view of the fact that the District Court attempted to withdraw that decision and issued a second findings of fact which did conclude that at-large elections in East Carroll Parish amounted to a constitutionally impermissible dilution of the black vote.

CONCLUSION

Since the decision of the Fifth Circuit en banc below is entirely consistent with prior decisions of this Court, and the case presents no question of a magnitude to justify the issuance of a writ of certiorari, respondent respectfully urges that this Court expeditiously deny the petition for writ of certiorari, so that your respondent may proceed to move in the District Court for the institution of a single-member district plan of apportionment and bring this extended litigation to its long overdue conclusion.

Respectfully submitted,

STANLEY A. HALPIN, JR.
Counsel for Respondent

CERTIFICATE

I, Stanley A. Halpin, Jr., Attorney for Respondent and a member of the Bar of the United States Supreme Court, do hereby certify that on this 22nd day of February, 1974, I served copies of the foregoing Response to Petition for Writ of Certiorari on the attorneys of record for petitioners herein, Mr. John F. Ward, Jr., and Mr. Charles R. Bracken, by mailing three copies of same, postage prepaid, to them at their offices at 770 North Street, Baton Rouge, Louisiana, and Varco Building, 405 Morgan Street, Lake Providence, Louisiana, respectively.

STANLEY A. HALPIN, JR.
Counsel for Respondent

Supreme Court, U. S.
FILED
SEP 2 1975
MICHAEL RODAK, JR., CLERK

In the
Supreme Court of the United States

OCTOBER TERM, 1975

No. 73-861

EAST CARROLL PARISH SCHOOL BOARD
AND EAST CARROLL PARISH POLICE JURY,
Petitioners,

v.

STEWART MARSHALL,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE PETITIONER

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August 28, 1975

INDEX

Page

Opinion Below 1
Jurisdiction 1
Question Presented 2
Statute Involved 2
Statement 2
Argument 12
Conclusion 21

TABLE OF AUTHORITIES

Cases Cited

Bradas v. Rapides Parish Police Jury, et al, 508 F.2d. 1109, (1975) 13, 19

Bryant v. East Baton Rouge Parish School Board, 466 F.2d. 519, (1972) 18

Chapman v. Meier, ____U.S.____, 42 L.Ed.2d 766, 95 S.Ct.____, (Jan. 1975) 12

Dallas County v. Reese, ____U.S.____, 44 L.Ed.2d 312, 95 S.Ct.__ , (5-19-75) 13, 17, 20

Davis v. Thomas County, 380 F.2d 93 (1967) 13

Dusch v. Davis, 387 U.S. 112, 18 L.Ed.2d 656, 87 S.Ct. 1554 (1967) 12

Dyer v. Love, 307 F. Supp. 974 (1969) 6

Fortson v. Dorsey, 379 U.S. 433, 85 S.Ct. 498, 13 L.Ed.2d 401 (1965) 12

Gaffney v. Cummings, 412 U.S. 735, 93 S.Ct. 2321, 37 L.Ed.2d 298 (1973) 12

Page

Howard v. Adams County Board of Supervisors, 453 F.2d 455 (1972) 13

Perry v. City of Opelousas, 515 F.2d. 640 (1975) 13, 19

Reynolds v. Simms, 377 U.S. 533, 12 L.Ed.2d 506, 84 S.Ct. 1362 (1964) 12

Wallace v. House, 515 F.2d. 619 (1975).....13, 19

White v. Regester, 412 U.S. 755, 93 S.Ct. 2332, 37 L.Ed 2d 314 (1973) 12, 16, 17, 18

Zimmer v. McKeithen, 485 F.2d. 1297 (1973) en banc 1, 10, 11, 14, 17

Zimmer v. McKeithen, 467 F.2d. 1381 (1972) panel 1, 10

Constitutional Provisions Cited

U.S. Const., Amend. XIV 2, 3, 13

U.S. Const., Amend. XV 2, 3, 13

United States Statutes Cited

28 U.S.C. Sec. 1254(1) 2

42 U.S.C. 1971, 1973(c) 2, 3, 7

Louisiana Statutes Cited

LRS 17:52 4

LRS 17:71.1-71.6 .....2, 4, 5, 6, 11

LRS 33:1221, et seq 2, 4, 5, 6

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OPINION BELOW

The en banc opinion of the Court of Appeals (Pet. for Cert. pages 43-79) is reported at 485 F.2d. 1297. The panel decision of the Court of Appeals (Pet. for Cert. pages 27-42) is reported at 467 F.2d 1381. The findings and decree of the District Court may be found at pages 95-97 of the appendix and pages 23-26 of the petition for certiorari.

JURISDICTION

The en banc judgment of the Court of Appeals was entered September 12, 1973. The petition for

certiorari was timely filed on December 3, 1973, and was granted June 30, 1975. The jurisdiction of this Court rests on 28 U.S.C. 1254(1)

QUESTION PRESENTED

Does an electoral plan for local public bodies, police jury and school board, which calls for at large elections from residence districts, invidiously discriminate against black citizens of the parish in violation of their Fourteenth and Fifteenth Amendment rights where black citizens constitute at least 58.7% of the population; the number of black and white registered voters is approximately equal and the District Court specifically found such election plan to be nondiscriminatory in practice?

STATUTES INVOLVED

The statutes and constitutional provisions involved in this case are the Fourteenth and Fifteenth Amendments to the Constitution of the United States of America; 42 U.S.C. 1973(c); Louisiana Revised Statutes Title 33, Section 1221 (La. Act 445 of 1968); Louisiana Revised Statutes Title 17, Section 71.1 through 71.6 (La. Act 561 of 1968).

STATEMENT

East Carroll Parish is a small rural, agriculturally oriented, parish in the north central portion of Louisiana. According to the 1970 United States Census, it had a total population of 12,884 persons of which number 7,568, or 58.7% are black and 5,306, or 41.3%, are white. (App. 95-96). It has only one in-

corporated town, the town of Lake Providence, with a population of approximately 6800 persons with approximately 62% thereof being black.

The police jury is the parish (county) governing body having jurisdiction and responsibility over such things as roads, bridges, drainage, etc. The school board has jurisdiction and responsibility only for the operation of a parish-wide public school system. Each of these public bodies is composed of nine members with one member elected from, and required to be a resident of, each of six wards, or election districts, and three elected from, and required to be residents of, one ward or election district. However, all members of each body must run at large, parish-wide, so that every citizen and registered voter of East Carroll Parish has an opportunity to vote for each and every member of the police jury and school board.

Jurisdiction of the District Court was invoked by the original plaintiff because of a question arising under the Fourteenth Amendment to the United States Constitution. (App. 1-26)

The jurisdiction of the District Court was invoked by intervenor-respondent because of questions arising under the Fourteenth and Fifteenth Amendments to the United States Constitution and the Voting Rights Act of 1965. (App. 63-74)

Prior to 1968 the parishes (counties) of Louisiana were divided into geographical wards. The members of the governing authority of the parish, the police jury, were elected from those wards according

to a population formula. LRS 33:1221, 1222, 1223, and 1224. At the same time, LRS 17:52 provided, with respect to the school board in each parish, that the voters of each police jury ward would elect a member of the school board for such parish for each police jurior in said ward.

However, when the Louisiana Legislature convened in May of 1968, both the Louisiana School Boards Association and the Police Jury Association, anticipating the need to reapportion under applicable decisions of this Court, proposed legislation to amend and/or repeal the existing statutes so as to permit each school board and police jury to reapportion itself in accordance with law.

As a result, the Louisiana Legislature of 1968 adopted Act 445 repealing the above referred to provisions relating to police juries and replaced them with basically one provision which permitted the police jury to reapportion itself and to determine the number of members it would have and how they would be elected. (LRS 33:1221) (Cert. Pet., App. D. p. 81) The Legislature likewise adopted Act 561 of 1968 also repealing the above quoted sections relative to school boards and replacing it with a thorough revision (LRS 17:71.1 through 71.6) permitting school boards to reapportion themselves completely independent of the police jury and gave them permissive authority to utilize at large elections. (Cert. Pet., App. E. p. 83)

These two acts became effective on July 20, 1968, prior to the original complaint being filed in this case.

Pursuant to this authorization, the East Carroll Police Jury appointed a reapportionment committee to study the reapportionment of that body. However, before that body could decide how it wanted to reapportion itself, the original complaint was filed herein in July, 1968, contending that the two bodies were malapportioned and requesting the District Court to order their reapportionment.

As a result of this complaint the District Court enjoined the upcoming election and ordered both bodies to submit constitutionally acceptable reapportionment plans to it. (App. 41-46) Subsequently, the East Carroll Parish Police Jury submitted to the Court a reapportionment plan, concurred in by the School Board, providing that one resident police juror and one resident school board member would be elected from each of Wards 1, 2, 4, 5, 6 and 7, and three police jurors and three school board members from Ward 3, but with all members of the Police Jury and School Board to run at large throughout the entire parish. (App. 56-57) This plan of reapportionment was approved by the District Court on December 2, 1968, with subsequent elections to be held in accordance therewith. (App. 50-51)

Subsequent thereto, on June 26, 1969, and September 10, 1969, the Attorney General of the United States notified the Attorney General of Louisiana that he was interposing an objection to Acts 445 and 561 of the 1968 Legislature, indicating that his objection was directed at that feature of the act which would permit multi-member districts. Also, on August 7,

1970, the Attorney General advised the East Carroll Police Jury that it could not implement its reapportionment plan because of his objection entered to Acts 445 and 561 which rendered such enabling legislation inoperable under *Dyer v. Love*, 307 F.Supp. 974 (1969), even though the District Court had approved and ordered implementation of the plan prior to the Attorney General's objection. (App. 58-59) (App. 75, 83-85, 90-99)

The Louisiana School Boards Association immediately pointed out to the Attorney General that since any reapportionment plan of any local political subdivision must be submitted to him for approval, any discriminatory use of the at large feature of the state act could be objected to by him at that time and that it was not objectionable until used in a discriminatory manner by some school board. Although discussions with the Attorney General in early 1970 left us expecting official withdrawal of his objections to the enabling legislation, it was not until after further discussion and correspondence that the Attorney General officially withdrew his objection by letter of April 14, 1972.

In the meantime, the District Court on its own motion on February 17, 1971, requested the Police Jury and School Board to resubmit reapportionment plans based upon the official 1970 census. Pursuant to that request, on March 11, 1971, each body resubmitted the same plan previously approved, as the 1970 census figures did not change the deviation or render

the previous reapportionment plan defective in any way. (App. 60-62)

On May 6, 1971, respondent, Stewart Marshall, intervened in this matter alleging that the at large system of elections violated his rights and others similarly situated by diluting the voting strength of black voters in East Carroll Parish in violation of the Fourteenth and Fifteenth Amendments to the United States Constitution, the Voting Rights Act of 1965, 42 U.S.C. 1971, et seq., and because the reapportionment plan was contrary to the laws of Louisiana in that the Attorney General's objection voided Acts 445 and 561 and there was, therefore, no authority for at large elections. Intervenor filed two alternate plans for reapportionment, both of which consisted of both single and multi-member districts. (App. 63-74) The District Court ordered the Police Jury and School Board to file alternative plans, which they did, although reiterating their beliefs that the existing at large system was the best. (App. 77-82 & 86)

The original plaintiff did not participate in any proceedings in this case subsequent to the above intervention. The Governor of Louisiana and other state officials were only nominal parties in interest and have also not participated in these proceedings.

On July 29, 1971, the District Court held a hearing during which intervenors presented statistical evidence and witnesses who testified that in their opinion the at large plan was discriminatory as to blacks and would dilute their voting strength. The substance of

their testimony was that, in their personal opinion, even though blacks constituted 58.7 percent of the population of the parish, they might not all vote for a black candidate; and, therefore, blacks might not get elected. The District Court also had before it opposing testimony of persons who testified as to the benefits to be derived from the at large system. In addition, the District Court also had before it the fact that two black members of the Police Jury had voted for the at large proposal although the black member of the School Board had voted against it. (App. 100-180)

After considering all of the evidence, statistics, testimony of witnesses and all of the plans presented, the District Court on August 2, 1971, issued its order and judgment reapproving the previously approved at large plan and setting forth the following seven specific findings of fact (App. 95-97):

1. That according to the 1970 U.S. Census, East Carroll Parish has a total population of 12,884 persons of which number 7,568 are blacks and 5,306 are whites and other nationalities; that the black population of East Carroll Parish, Louisiana, comprises 58.7 percent of the total population.

2. That the plan of reapportionment offered by East Carroll Parish Police Jury and East Carroll Parish School Board is more satisfactory than other plans presented because it offers a zero deviation while all other plans considered did not.

3. That the plan of reapportionment offered by

East Carroll Parish Police Jury and East Carroll Parish School Board does not dilute nor discriminate against the black population as the new voting unit from which officers of the jury and the board are to be elected is comprised of 58.7 percent blacks, or a substantial majority of blacks, while other plans considered diluted the black population of different areas within the parish significantly greater than the plan offered by the jury and school board.

4. That the plan recommended by East Carroll Parish Police Jury and East Carroll Parish School Board has actually been in effect in East Carroll Parish since December 2, 1968, and the plan has not proved discriminatory against blacks.

5. That the plan presents the wishes of both public bodies, having been endorsed by two of the three black public officials now serving on these public bodies.

6. That the plan of apportionment offered by East Carroll Parish Police Jury and East Carroll Parish School Board is a constitutionally acceptable plan and meets all of the requirements of the "one-man, one-vote" rule of law.

7. That the evidence adduced by intervenor failed to show that the plan offered by the two aforesaid public bodies would discriminate against blacks or in any manner dilute the black population.

Findings 1, 2 and 6 dealt primarily with the one-man,

one-vote rule *but* findings 3, 4, 5 and 7 dealt specifically with the question of dilution of the strength of black voters and clearly found that there was no *proof* of discrimination or dilution, that the plan in operation had not operated to discriminate or dilute black voting strength, and that the other plans diluted the black population of different areas within the parish significantly greater than the plan offered by the Police Jury and School Board.

Respondent then noticed his appeal to the Fifth Circuit Court of Appeals on August 9, 1971. (App. 98-99). The panel of the Court of Appeals which originally heard this case affirmed the District Court by a two-to-one vote, 467 F.2d 1381. Respondent Marshall then applied for a rehearing en banc which was granted. While this matter was pending before the en banc Court of Appeals, that Court specifically requested the defendant public bodies to submit to it current voter registration statistics which they did. As shown by the en banc opinion, 485 F.2d 1297, at 1301 there were, as of October 6, 1971, 3,342 white registered voters and 2,899 black registered voters.

According to the registrar of voters for East Carroll Parish, his voter registration rolls now reflect the following registration as of July 31, 1975:

White Democrats	3,470	Black Democrats	3,514
White Republicans	46	Black Republicans	16
White Other	17	Black Other	20
Total White Registered Voters	3,533	Total Black Registered Voters	3,550

Total registered voters—7,083

In addition, as stated in the dissenting opinion of Judges Clark, Dyer, Lewis R. Morgan and Roney, Circuit Judges, 485 F.2d 1297, at 1314:

> ". . . The proof adduced in the District Court concerning the operation of the at-large election plan which governed the 1970 elections in this parish disclosed that a black candidate in the primary election for Police Jury was defeated by only 9 votes. Another black candidate qualified for the second primary in which he ran third, 12 votes behind the second place white candidate. A third black candidate won in his contest against the incumbent president of the Police Jury, polling more votes than any candidate, not just for this post but in the entire election.
>
> In the 1972 election which was held for only three of the nine school board posts, two blacks and one white candidate were elected. . . ."

Under Louisiana law, school board members are elected for six year terms and one-third of the members of a school board stand for election every two years. L.R.S. 17:71.2 (cert. pet. App. E, page 83). Such school board elections are held at the time of congressional elections in even numbered years. All police jury members stand for election at the same time for four year terms held in odd numbered years. Consequently, there were no police jury elections in 1972, and only three of the nine school board members stood for election that year.

Also, the officials of the town of Lake Providence which is located in Ward 3 (the only multi-membered district ward, electing three members) and which, as

noted heretofore, contains approximately 50% of the total population of the parish and which is approximately 60% black, are also elected at large. Presently, the town of Lake Providence has a black mayor and all five of its aldermen are black. In addition, in 1974, while this matter was pending on certiorari, the respondent herein, Stewart Marshall, was elected, at large, to the position of City Marshall.

However, the Fifth Circuit Court of Appeals, sitting en banc, by a nine-to-six split decision, on September 12, 1973, reversed the decision of the panel of that Court and vacated and remanded the judgment of the District Court for proceedings consistent with their disposition. A stay was granted pending certiorari which was timely filed on December 3, 1973, and granted by this Court on June 30, 1975.

ARGUMENT

We respectfully submit that the decision of the Court of Appeals, en banc, is in direct conflict with the principles enunciated and established by this Court for determining the constitutionality of reapportionment and election plans by this Court's decisions in *Reynolds v. Simms*, 377 U.S. 533, 12 L.Ed.2d 506, 84 S.Ct. 1362 (1964), *Dusch v. Davis*, 387 U.S. 112, 18 L.Ed.2d 656, 87 S.Ct. 1554 (1967); *Fortson v. Dorsey*, 379 U.S. 433, 85 S.Ct. 498, 13 L.Ed.2d 401 (1965); *Gaffney v. Cummings*, 412 U.S. 735, 93 S.Ct. 2321, 37 L.Ed. 2d 298 (1973); *White v. Regester*, 412 U.S. 755, 93 S.Ct. 2332, 37 L.Ed.2d 314 (1973); *Chapman v. Meier*, U.S. , 42 L.Ed.2d 766, 95 S.Ct. (January 1975); and particularly *Dallas County*

v. Reese, U.S. , 44 L.Ed.2d 312, 95 S.Ct. , (May 19, 1975).

The instant decision of the Court below is also inconsistent with the principles utilized by it in other of its decision such as *Davis v. Thomas County*, 380 F.2d. 93 (1967); *Howard v. Adams County Board of Supervisors*, 453 F.2d. 455 (1972); *Perry v. City of Opelousas*, 515 F.2d. 640 (1975); *Wallace v. House*, 515 F.2d. 619 (1975) and particularly *Bradas v. Rapides Parish Police Jury, et al*, 508 F.2d. 1109, (1975).

The basic principles laid down by the above cited decisions of this Court as those which should be considered by Federal Courts in determining the constitutionality of reapportionment or electoral process plans under the Fourteenth and Fifteenth Amendments to the United States Constitution are (1) multi-member districts are not per se unconstitutional,; (2) where the Federal Courts are forced to fashion reapportionment plans because the appropriate legislative body fails to indicate a preference, single member districts are generally preferred; (3) that constitutional requirements are not as stringent for local political subdivisions as they are for legislatures or congressional districts; (4) that reapportionment is primarily a legislative responsibility and function and the desire of the public body with respect thereto should be given preference; (5) plaintiffs in these suits carry the burden of proving invidious discrimination; (6) the findings and conclusions of the District Court should be given great weight; (7) at large election from resi-

dence districts are constitutional absent findings in a particular case that a plan in fact operates impermissibly to dilute the voting strength of an identifiable element of the voting population. We respectfully submit that the District Court followed these principles, as did the panel decision of the Court of Appeals, but that the majority opinion in the en banc decision did not.

Even though reapportionment in East Carroll Parish became a law suit, it can be said that the District Court was not forced to fashion its own reapportionment plan as the public bodies responsible for reapportionment had commenced that process prior to the filing of the original suit in 1968. Be that as it may, however, the District Court did have before it a plan preferred by the legislative bodies and to which he gave preference. In 1971, when the Court on its own motion requested the two public bodies to reconsider their reapportionment based upon the just then available 1970 United States census, they immediately did so on March 12, 1971, expressing to the Court their belief that the existing at large, residence district plan was preferable. (App. pages 60-62). Once again the District Court had before it an expressed legislative preference. In addition, the District Court had before it evidence of the actual operation of the at large, residence district, plan in elections the preceeding year, 1970, in which blacks actively and effectively participated. As pointed out in the dissenting opinion of Judges Clark, Dyer, Morgan and Roney, in the en banc decision, 485 F.2d 1297 at 1311:

> ". . . The proof adduced in the District Court concerning the operation of the at-large election plan which governed the 1970 elections in this parish disclosed that a black candidate in the primary election for the Police Jury was defeated by only 9 votes. Another black candidate qualified for the second primary in which he ran third, 12 votes behind the second place white candidate. *A third black candidate won in his contest against the incumbent president of the Police Jury, polling more votes than any candidate, not just for this post but in the entire election. . .*" (Emphasis added)

Respondent Marshall did not intervene, raising the Fifteenth Amendment dilution question until May 6, 1971, some two months after the two legislative bodies had responded to the District Court's request regarding reconsideration in light of the 1970 census. The District Court held a lengthy hearing, primarily on the question of dilution, on July 29, 1971, and thereafter on August 2, 1971, issued its opinion and order approving continuation of the at large plan with the following specific findings (App. 95-97):

> ". . . 1. That according to the 1970 U. S. Census, East Carroll Parish has a total population of 12,884 persons of which number 7,568 are blacks and 5,306 are whites and other nationalities; that the black population of East Carroll Parish, Louisiana, comprises 58.7 percent of the total population.
>
> 2. That the plan of reapportionment offered by East Carroll Parish Police Jury and East Carroll Parish School Board is more satisfactory than other plans presented because it offers a zero deviation while all other plans considered did not.

3. That the plan of reapportionment offered by East Carroll Parish Police Jury and East Carroll Parish School Board does not dilute nor discriminate against the black population as the new voting unit from which officers of the jury and the board are to be elected is comprised of 58.7 percent blacks, or a substantial majority of blacks, while other plans considered diluted the black population of different areas within the parish significantly greater than the plan offered by the jury and school board.

4. That the plan recommended by East Carroll Parish Police Jury and East Carroll Parish School Board has actually been in effect in East Carroll Parish since December 2, 1968, and the plan has not proved discriminatory against blacks.

5. That the plan represents the wishes of both public bodies, having been endorsed by two of the three black public officials now serving on these public bodies.

6. That the plan of apportionment offered by East Carroll Parish Police Jury and East Carroll Parish School Board is a constitutionally acceptable plan and meets all of the requirements of the "one-man, one-vote" rule of law.

7. That the evidence adduced by intervenor failed to show that the plan offered by the two aforesaid public bodies would discriminate against blacks or in any manner dilute the black population. . . ."

The panel of the Fifth Circuit which originally heard the appeal apparently gave considerable weight to the specific and detailed findings of the District Court as did this Court in *White v. Regester*, 412 U.S.

755, 37 L.Ed 2d 314, 93 S.Ct. 2332 and affirmed.

However, and in spite of the fact that four of the seven findings of the District Court, findings 3, 4, 5 and 7, specifically dealt with the question of dilution and specifically found no proof of discrimination or dilution (App. page 96), a majority of the Court below sitting en banc (with six members filing dissenting opinions) apparently seized on the rather minute fact that there were slightly less black registered voters than white registered voters as of October 6, 1971, (2,899 black—3,342 white) as the pivotal point to justify its disregard of the District Court's specific findings to the contrary. *Zimmer v. McKeithen*, 485 F.2d 1297 at 1301, 1306.

In addition to reversing the District Court on its findings of fact without any finding whatsoever of an abuse of discretion by the District Court, the majority in the en banc decision virtually refused to consider the additional fact that in actual operation the at large residence district plan had not operated ". . . to dilute the voting strength of an identifiable element of the voting population. . .". *Dallas County v. Reese*, U.S. , 44 L.Ed.2d 312, 95 S.Ct. at 315. In 1972, three of the nine seats on the school board were up for election. Two of the three seats were won by blacks. Can such election results, winning two out of three seats, possibly be evidence,

> ". . . .that the political processes leading to nomination and election were not equally open to participation by the group in question—that its members had less opportunity than did other residents

> in the districts to participate in the political processes and to elect legislators of their choice..." *White v. Regester* at 324,

or evidence that this plan "...in fact operates impermissibly to dilute the voting strength of an identifiable element of the voting population..."? *Dallas County v. Reese*, supra at 316. It might be one thing if the District Court here had disregarded the actual operation of the plan and found dilution. But that is not the case. The District Court here, "...based on the totality of the circumstances,..evolved its ultimate assessment..." of the at large residence district plan and concluded that it would not invidiously discriminate against black citizens of East Carroll Parish. The District Court's "...intensely local appraisal of the design and impact of..." the at large residence district plan, "....in the light of past and present reality, political and otherwise..." should not have been disturbed. *White v. Regester*, 37 L.Ed.2d at 326.

The Court below, itself, has in almost every instance followed the principles laid out by the decisions of this Court in these cases. It has generally given great weight to the findings and conclusions of the District Court regardless of whether the District Court had directed implementation of a single member district plan or a multi-member district plan. See *Bryant v. East Baton Rouge Parish School Board*, 466 F.2d 519, (1972) per curiam opinion affirming District Court's approval of a three district multi-member district plan with at large elections. In two recent decisions the court below affirmed the District Court's findings of dilution and his approval of a basic single member plan in *Perry v. City of Opelousas*, 515 F.2d 640, and *Wallace v. House*, 515 F.2d. 619, although in *Wallace v. House* it reversed the District Court in part for failing to defer to the legislative preference for an at large feature. The Court below has also followed the principle that the plaintiff bears the burden of proving "invidious discrimination" and "unconstitutional dilution" in another recent decision, *Bradas v. Rapides Parish Police Jury, et al*, 508 F.2d. 1109, (February 1975). It reversed the District Court's finding of unconstitutional dilution and substitution of a single member district plan for an eighteen member multi-member district plan, ordering the multi-member district plan (one district which elected ten members to both the police jury and school board had only 37% black population) reinstated on the grounds that the black plaintiffs *had not carried their burden* of showing invidious discrimination and dilution of the minority voting interests. This was in spite of evidence in the record that no black had ever been elected to either body in the history of Rapides Parish. Obviously, the plaintiffs in *Bradas* made out a much better case for discrimination and dilution than have the plaintiffs here where blacks have consistently and effectively participated in the political process and been elected to office on both public bodies ever since the plan was put into operation.

We respectfully submit that applying the heretofore mentioned principles enunciated and established

by decisions of this Court to the facts of this case—black citizens constituting 58.7% of the total population of the parish; the number of black registered voters being approximately equal to the number of white registered voters (black registration now slightly ahead); black citizens having consistently been nominated and elected to both public bodies since the at large-residence district plan was implemented by the District Court; the District Court having made specific findings of no invidious discrimination against black citizens and voters and no dilution of black voting interests; virtually all of the elected officials (the mayor, all five aldermen, and the city marshall) of the only incorporated town in the parish which contains approximately 50% of the total population of the parish, are black and were elected at large—the en banc decision of the Court below must be reversed.

We would also respectfully submit that the recent decision of this Court in *Dallas County v. Reese*, U.S. , 44 L.Ed.2d 313, 95 S.Ct. , decided May 19, 1975, is on all fours with the instant case and is controlling. The same type of electoral plan was involved—at large elections but with district residence requirements. The issue was the same—does such a plan operate to minimize or cancel out the voting strength of identifiable racial or political elements of the voting population. In neither case has the at large-residence district plan been proven to invidiously discriminate or minimize or cancel out the voting strength of identifiable racial or political elements of the voting population. The only difference is that the position of

the public bodies in the case at bar is stronger because the electoral plan here has proven to be non-discriminatory in actual operation. This Court should so hold.

CONCLUSION

For the reasons stated, it is respectfully submitted that the en banc judgment of the Court of appeals should be reversed and the judgment of the panel of the Court of appeals and the District Court should be affirmed and reinstated.

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CERTIFICATE

I, John F. Ward, Jr., attorney for petitioners and a member of the Bar of the United States Supreme Court, do hereby certify that on this 28th day of August, 1975, I served copies of the foregoing Brief of Petitioner on the attorneys of record for respondent herein, Mr. Stanley A. Halpin, Jr., and Mr. George M. Strickler, Jr., by mailing three copies of same, postage prepaid, to them at their offices at 906 Carondelet Building, 226 Carondelet Street, New Orleans, Louisiana, 70130.

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Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 73-861

EAST CARROLL PARISH SCHOOL BOARD, *et al.*,

Petitioners,

v.

STEWART MARSHALL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR RESPONDENT

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TABLE OF CONTENTS

PAGE

Questions Presented 1

Statutory Provisions Involved 2

Summary of Argument 3

ARGUMENT—

I. The Decision of the District Court Is Inconsistent With Section 5 of the Voting Rights Act 5

1. The rule of *Connor* v. *Waller* 5

2. Deference to the Attorney General 9

II. The Decision of the District Court Is Inconsistent with *Chapman* v. *Meier*, 420 U.S. 1 (1975) .. 19

III. The District Court Did Not Apply the Correct Standard in Determining Whether the At-Large Plan Discriminated Against Black Voters 21

IV. This Appeal Is Moot 27

CONCLUSION 31

APPENDIX—

Order of the District Court, March 27, 1972 ..... 1aa

Letter of June 26, 1969, from Jerris Leonard to Hon. Jack Gremillion 6aa

Letter of September 10, 1969, from Jerris Leonard to Hon. Jack Gremillion 8aa

Letter of February 21, 1972, from Hon. Jack Gremillion to John F. Ward 11aa

PAGE

Letter of February 22, 1972, from John F. Ward to David Norman 13aa

Letter of April 14, 1972, from David Norman to John F. Ward 16aa

Letter of April 18, 1973, from J. Stanley Pottinger to Hon. William Guste 17aa

TABLE OF AUTHORITIES

Cases:

Amalgamated Meat Cutter, etc. v. *Jewel Tea Co.*, 381 U.S. 676 (1965) 11
Aune v. *Reyndeis*, 344 F.2d 835 (10th Cir. 1965) 30

Banks Mfg. Co. v. *Ransburg Electric-Coating Corp.*, 281 F.2d 252 (7th Cir. 1960) 30
Bell v. *Tensus Parish Police Jury*, W.D. La., CA. No. 16670 18
Best v. *Humboldt Placer Mining Co.*, 371 U.S. 334 (1963) 11
Board of Flour Inspectors v. *Glover*, 160 U.S. 170 (1895) 30

Canadian Ingersoll-Rand Co. v. *Peterson Products, Inc.*, 350 F.2d 18 (9th Cir. 1965) 30
Chapman v. *Meier*, 420 U.S. 1 (1975) 4, 19, 20, 21
Collins v. *Day*, W.D.La., CA No. 10397 18
Collins v. *Union Parish Police Jury*, W.D.La., CA No. 17641 19
Conner v. *Johnson*, 402 U.S. 690 (1971) 5, 14, 19, 20
Connor v. *Waller*, 44 L.Ed. 2d 486 (1975) 1, 3, 6, 7, 8, 12, 14
Connor v. *Williams*, 404 U.S. 549 (1972) 6, 19

PAGE

Far East Conference v. *United States*, 342 U.S. 570 (1952) 10, 11
Federal Power Commission in Louisiana Power and Light Co., 405 U.S. 621 (1972) 17
Ferrell v. *Trailmobile, Inc.*, 223 F.2d 697 (5th Cir. 1955) 30

Gaillard v. *Young*, D.S.C., CA No. 74-1265 13
Graves v. *Barnes*, 343 F. Supp. 704 (W.D. Tex. 1972) ..23, 24

Hall v. *Issaquenna County Board of Supervisors*, 453 F.2d 404 (5th Cir. 1971) 28
Hewitt-Robbins, Inc. v. *Enstein Freight Ways, Inc.*, 371 U.S. 84 (1962) 11
Humphrey v. *Lincoln Parish Police Jury*, W.D.La., CA No. 13112 18

Innarelli v. *Morton*, 463 F.2d 174 (3rd Cir. 1972) 30

Krock v. *Electric Mortogate Co.*, 339 F.2d 73 (1st Cir. 1964) 30

Milk Wagon Drivers Union v. *Meadowmoor Dairies*, 312 U.S. 287 (1941) 29

Pennsylvania v. *Wheeling & Belmont Bridge Co.*, 18 How. (59 U.S.) 421 (1885) 29
Pipes v. *Jackson Parish School Board*, W.D. La., CA No. 14424 18

Ryan v. *U.S. Lines Co.*, 303 F.2d 430 (2d Cir. 1961) 30

Sanks v. *Georgia*, 401 U.S. 144 (1971) 30
Smith v. *Pollin*, 194 F.2d 349 (D.C. Cir. 1952) 30

Turpin v. *Natchitoches Parish Police Jury*, W.D. La., CA No. 14659 18

PAGE

United States v. *El Paso Natural Gas Co.*, 376 U.S. 651 (1964) 22
United States v. *Philadelphia Nat. Bank*, 374 U.S. 321 (1963) 11
United States v. *Swift & Co.*, 286 U.S. 106 (1932) 29
United States v. *Western P. R.R. Co.*, 352 U.S. 59 (1956) 11

Wactor v. *McKeithen*, W.D. La., CA No. 12663 18
Whatley v. *Union Parish Police Jury*, W.D. La., CA No. 17019 ..... 18, 19
White v. *Regester*, 412 U.S. 755 (1973) 4, 23, 24, 25, 26
Wyche v. *Madison Parish Police Jury*, W.D. La., CA No. 14053 18

Statutes and Regulations:

42 U.S.C. §1973c, Section 5 of the Voting Rights Act 1-21, 28, 31

La. Rev. Stat. Ann., Art 18, §18:351 (1969) 26

La. Rev. Stat. Ann., Art. 18, §18:358 (1969) 26

Act 445, La. Laws 1968 ..... 14, 15, 16, 21

Act 561, La. Laws 1968 ..... 14, 15, 16, 17, 21

28 C.F.R. §51.10 10

28 C.F.R. §55.12 10

Legislative Materials:

S. Rep. 94-295 ..... 9, 10, 13, 14

H. Rep. 94-196 9

Hearings Before a Subcommittee of the Senate Judiciary Committee, 94th Cong., 1st Sess., 597 (1965) 9, 10, 16, 18

PAGE

Other Authorities:

United States Commission on Civil Rights, The Voting Rights Act: Ten Years After (1975) 9, 10, 23, 24, 25, 26, 28

Rule 52, Federal Rules of Civil Procedure 22

Rule 60(b)(5), Federal Rules of Civil Procedure 29

Statistical Abstract of the United States: 1973 ..... 22, 23

United States Census: 1970, General Social and Economic Characteristics, Louisiana 23

7 Moore's Federal Practice ¶60.26[4] 29

Wright and Miller, Federal Practice and Procedure, §2873 30

Memorandum Brief of Appellees on Application of Section 5, No. A-968, October Term, 1974 7

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 73-861

EAST CARROLL PARISH SCHOOL BOARD, *et al.*,

Petitioners,

v.

STEWART MARSHALL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR RESPONDENT

Questions Presented

1. Did the district court violate *Connor* v. *Waller*, 44 L.Ed. 2d 486 (1975), by approving the use of at-large elections which had previously been enacted by both the State Legislature and the Parish but never submitted for approval under section 5 of the Voting Rights Act?

2. Should the district court have deferred to the primary jurisdiction of the Attorney General before approving a change from single member districts to at-large elections?

3. Was the district court's approval supported by the "persuasive justifications" required for a change from single member to at-large elections?

4. Did the district court apply the correct standard in determining whether the at-large plan discriminated against black voters in violation of the Fourteenth and Fifteenth Amendments?

5. Was the instant appeal from the district court's order of August 2, 1971, rendered moot by the district court's subsequent order of March 27, 1972?

Statutory Provisions Involved

Section 5 of the Voting Rights Act, 42 U.S.C. §1973c, provides in pertinent part:

> Sec. 5. Whenever a State or political subdivision with respect to which the prohibitions set forth in section 4(a) based upon determinations made under the first sentence of section 4(b) are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964 . . . such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to a vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2), and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: *Provided,* That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, except that neither . . . the Attorney General's failure to object, nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure.

Summary of Argument

In November, 1968, after the then existing ward districting plan had been declared invalid, the East Carroll Police Jury adopted an at-large plan for election of the Police Jury and School Board. This change in election procedure was never submitted for approval under section 5 of the Voting Rights Act. This failure to comply with the Voting Rights Act is not excused by the fact that the at-large plan was adopted after the district court had invalidated the earlier districting plan. *Connor* v. *Waller,* 44 L.Ed. 2d 486 (1975).

When a redistricting plan is proposed to a federal court in a section 5 jurisdiction, the court should defer consideration of the plan until it has first been submitted to the Attorney General. The question of whether such a change in election laws has the purpose or effect of discriminating on the basis of race is within the primary jurisdiction of the Attorney General, who has extensive and unique experience in evaluating the discriminatory impact of redistricting plans. In the instant case the Attorney General had repeatedly indicated his desire that the East Carroll at-large plan be submitted for review under section 5. The district court erred in failing to defer to the primary jurisdiction of the Attorney General.

To the extent that the district court ordered the holding of at-large elections, it violated the rule that such at-large plans are to be avoided whenever feasible. *Chapman* v. *Meier,* 420 U.S. 1 (1975). The fashioning of single-member districts was clearly possible in this case, and they had been consistently used in the past. The district court's obligation to order single-member districts was not ended by the "adoption" of the at-large plan by the Police Jury, since the Police Jury had no authority to adopt such a plan.

The district court, in evaluating the constitutionality of the at-large plan, did not apply the standards subsequently articulated in *White* v. *Regester,* 412 U.S. 755 (1973). The district court applied a *per se* rule that at-large elections could never be discriminatory in a jurisdiction with a black population majority. But both the courts in *White* v. *Regester* and the Attorney General in administering the Voting Rights Act have concluded that, under certain circumstances, at-large elections can have a discriminatory effect in such a jurisdiction. Had the district court applied the correct standards to the facts before it in 1971, it would have held the at-large plan invalid. Since, however, there have been significant developments during the intervening years, the Court need not consider how the case should have been decided in 1971, but should direct the district court to apply the correct standard to the circumstances now in existence.

This appeal is from a decision of the district court of August 2, 1971, ordering the holding of at-large elections. On March 27, 1972, the district court concluded that, in the light of developments since its earlier decision, the at-large plan was indeed discriminatory, and ordered that subsequent elections be held on a ward basis. It is unnecessary for the Court to decide whether at-large elec-

tions could have been sustained, since the district court has now indicated it no longer wishes to order elections on that basis. This appeal is thus moot.

ARGUMENT

I.

The Decision of the District Court Is Inconsistent With Section 5 of the Voting Rights Act.

This action arose in the state of Louisiana, a jurisdiction subject to the special provisions of section 5 of the Voting Rights Act. Prior to 1968 members of the School Board and Police Jury in East Carroll Parish were elected from seven wards, six of them single member districts. The new election plan at issue in this appeal provides for election of all nine members on an at-large basis. That plan thus constitutes a change in voting practices and procedures. Such changes cannot normally be enforced unless first approved by the Attorney General or the United States District Court for the District of Columbia as required by section 5 of the Voting Rights Act. 42 U.S.C. §1973c. Since this case does not fall within the narrow exception delineated by *Connor* v. *Johnson,* 402 U.S. 690 (1971), the district court erred in approving the change to at-large elections.

1. The Rule of *Connor* v. *Waller.*

Connor v. *Johnson* held that a decree of a United States District Court "is not within reach of Section 5 of the Voting Rights Act." 402 U.S. at 691. The exception to section 5 established by *Connor* v. *Johnson* is a narrow one, and does not apply to changes in election laws which are fashioned or adopted by a state or local government and

subsequently submitted for approval to a local district court.

In *Connor* v. *Waller,* 44 L.Ed. 2d 486 (1975), the United States District Court for the Southern District of Mississippi had held invalid a 1971 state reapportionment plan on the ground that differences in the population of the districts violated equal protection. See *Connor* v. *Williams,* 404 U.S. 549 (1972). Subsequently the Mississippi legislature in 1975 adopted a new districting plan and submitted it for approval to the district court which had invalidated the earlier plan. The district court concluded that the 1975 redistricting was not subject to section 5 because adopted in the course of the reapportionment litigation. The district court therefore proceeded to consider, and reject, a claim that the 1975 plan discriminated on the basis of race.

On appeal this Court reversed. The Court concluded unanimously that the 1975 districting plan was a "legislative enactmen[t] required to be submitted pursuant to §5 of the Voting Rights Act." Because the statutes had been enacted by the state, they would not be effective "until and unless cleared pursuant to §5. The District Court accordingly also erred in deciding the constitutional challenges to the Acts based upon claims of racial discrimination." 44 L.Ed. 2d at 486. The Court limited the authority of the district court under *Connor* v. *Johnson* to fashioning an interim plan for the 1975 elections. *Id.*

This case is indistinguishable from *Connor* v. *Waller.* Indeed, the Attorney General of Mississippi in *Connor* relied heavily on the holding of the original panel of the court of appeals in the instant case that section 5 did not apply to the East Carroll Parish plan:

> The Court of Appeals for the Fifth Circuit in a case on all-fours with the case *sub judice* regarding the Section 5 issue posed here, has interpreted this Court's ruling in *Connor* v. *Johnson,* 402 U.S. 690, that a district court decree is not within the reach of Section 5 of the Voting Rights Act of 1965, to include a situation identical to the situation and circumstances surrounding the Mississippi reapportionment plan. In *Zimmer* v. *McKeithen,* 467 F.2d 1381 (1972) . . . the court of appeals held that since the plan was prompted by the court order . . . neither the plan nor the decree was subject to Section 5 of the Voting Rights Act.[1]

The reasoning of *Connor* v. *Waller* applies *a fortiori* to the instant case, for in *Connor* v. *Waller* the plan adopted by the legislature was essentially the same as that fashioned earlier by the court, whereas in the instant case the at-large plan was both fashioned and adopted by the Police Jury.

The role of the district court in the initial adoption of the at-large plan was nominal at best. The original complaint alleging unconstitutional differences in the size of the East Carroll Parish wards was filed July 12, 1968. A 1-22. Less than a month later counsel for defendants virtually stipulated to judgment for plaintiffs invalidating the ward plan, A 33-36, and agreed "to reapportion" by a date set by the court. A 37-40. The district court issued no guidelines to the defendants for preparing a new

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[1] *Connor* v. *Waller,* No. A-968, October Term, 1974, Memorandum Brief of Appellees on the Applicability of Section 5 of the Voting Rights Act, pp. 5-6. The instant case was decided by the court of appeals *sub nom. Zimmer* v. *McKeithen.* The author of the original panel decision in this case, who concluded that section 5 did not apply, was the same judge who erroneously ruled, as a member of the three judge court, that section 5 did not apply to the statute in *Connor* v. *Waller.* See *Connor* v. *Waller,* No. A-968, October Term, 1974, Supplemental Memorandum For Appellants, 2a-3a.

plan,[2] but merely directed them to "prepare and submit to this Court on or before October 1, 1968, a constitutionally satisfactory plan for the reapportionment." A 45. On November 18, 1968, the East Carroll Police Jury adopted a resolution establishing an at-large plan of election. A 57. The resolution was transmitted to the district court by the president of the Police Jury with the following explanation:

> In accordance with the order of Court, a resolution was *adopted* by East Carroll Parish Police Jury on November 18, 1968, setting forth a plan of reapportionment for East Carroll Parish, Louisiana, which the Police Jury asks you to *incorporate* in your forthcoming judgment on this matter. A 56 (Emphasis added).

No explanatory memorandum, statistics, or argument were submitted with the plan, which plaintiff did not oppose. Within a few days after the plan was submitted, and without any hearing, the district court ordered the plan into effect in an order approved, and apparently drafted, by counsel. A 50-51. In 1971, after permitting intervenor to challenge the jury's at-large plan, the district court reaffirmed its approval of the jury's plan. A 96.[3]

This case, as *Connor* v. *Waller,* involves a redistricting plan which was adopted by a state or local government

[2] The complaint was filed barely a month before primary elections scheduled for August 17, 1968. A 20. The plaintiff asked that the August 17 election be enjoined or held on an at-large basis. A 22. At the hearing of August 6, 1968, the district court ordered the August 17 election be at-large and directed the Police Jury to adopt a reapportionment plan of its own for subsequent elections. A 38.

[3] As in 1971, the Police Jury and the School Board again adopted resolutions, this time proposing that the earlier plan be kept in force. A 61. Counsel for the Police Jury explained that the resolutions "adopt the same plan of reapportionment under which these bodies have been acting since December 2, 1968." A 60.

and thus required approval under section 5. It is of no relevance to the Voting Rights Act that at the time the plan was enacted the Police Jury was under a court order to adopt some plan. Once the plan was adopted by the Police Jury, it could only be approved under the Voting Rights Act by the Attorney General or the District Court for the District of Columbia. The District Court for the Western District of Louisiana erred in both 1968 and 1971 in purporting to approve enforcement of the Police Jury's reapportionment plan without first requiring that it be considered under section 5.

2. Deference to the Attorney General.

The Attorney General of the United States, in administering section 5 of the Voting Rights Act, has primary jurisdiction over questions as to whether a redistricting plan in a section 5 jurisdiction has the effect of discriminating on the basis of race. When a redistricting plan is proposed to a federal district court in such a jurisdiction, the court should, under ordinary circumstances, defer consideration of that plan and its constitutionality until the plan has been reviewed and approved by the Attorney General under section 5.

In carrying out its responsibilities under the Act the Department of Justice has acquired unique expertise in assessing the discriminatory effect of districting plans. Since 1970 the Attorney General has scrutinized over 400 redistricting plans,[4] and the largest number of objections interposed by the Attorney General under section 5 have been to such plans.[5] A total of 58 redistricting plans in 9

[4] Hearings Before A Subcommittee of the Senate Judiciary Committee, 94th Cong., 1st Sess., 597 (1965).

[5] *Id.* 597-600 (Statement of J. Stanley Pottinger); S. Rep. No. 94-295, p. 18; H. Rep. No. 94-196, p. 10.

states were disapproved by the Attorney General between 1971 and 1975 on the grounds that they discriminated on the basis of race.[6] The Attorney General has developed detailed procedures for evaluating such plans,[7] and Justice Department employees are uniquely equipped to evaluate proposed redistricting through an understanding of the practical realities of the local situation and by drawing up alternative plans for comparison.[8] Under the Department of Justice procedures information concerning such submissions is disseminated to a number of interested groups and individuals and all persons and organizations are encouraged to bring to the attention of the Department any relevant information.[9] Where the Attorney General objects to a proposed plan the Department can and does offer informal assistance to the affected jurisdiction in preparing a nondiscriminatory plan.[10] The evaluation of election law changes under section 5 "is the highest priority of the Voting Section of the Department of Justice's Civil Rights Division." [11]

This Court has long held that, when a question arises within the expertise of a federal agency, the courts should in general defer action until the agency has had an opportunity to consider the matter. *Far East Conference* v.

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[6] United States Commission on Civil Rights, The Voting Rights Act: Ten Years After, 403-409 (1975).

[7] See 28 C.F.R. §51.10.

[8] See Hearings Before A Subcommittee of the Senate Judiciary Committee, 94th Cong., 1st Sess., 669-675 (1975).

[9] *Id.;* see 28 C.F.R. §§51.12-51.16.

[10] United States Commission on Civil Rights, The Voting Rights Act: Ten Years After, 30 (1975).

[11] S. Rep. No. 94-295, p. 16.

United States, 342 U.S. 570 (1952). Such a deferral to the agency with primary jurisdiction is particularly appropriate "in cases raising issues of fact not within the conventional experience of judges," [12] where the agency has special competence or expertise,[13] or when it is necessary to protect the integrity of the regulatory scheme.[14]

When, in a federal district court in a jurisdiction subject to section 5 of the Voting Rights Act, the state or any other party proposes that the court order into operation a new "standard, practice or procedure with respect to voting," this doctrine of primary jurisdiction is normally applicable. Federal judges do not ordinarily have the unusual experience or expertise which the Attorney General and his staff have developed in administering the Voting Rights Act since 1965. In evaluating the potentially discriminatory effect of a proposed redistricting plan the Department of Justice is "better equipped than courts by specialization, by insight gained through experience, and by more flexible procedure." *Far East Conference* v. *United States,* 342 U.S. at 575. By referring such plans to the Attorney General the courts can assure that redistricting litigation is not used to undermine the scheme established by Congress to assure that changes in election procedure would not be put into operation until scrutinized under section 5.

Deferral to the Attorney General will also serve to reduce both the burden on the lower courts and their intru-

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[12] *Far East Conference* v. *United States,* 342 U.S. at 574.

[13] *United States* v. *Western P. R.R. Co.,* 352 U.S. 59 (1956); *Hewitt-Robins, Inc.* v. *Enstein Freight-Ways, Inc.,* 371 U.S. 84 (1962); *Amalgamated Meat Cutters, etc.* v. *Jewel Tea Co.,* 381 U.S. 676 (1965); *Best* v. *Humboldt Placer Mining Co.,* 371 U.S. 334 (1963).

[14] *United States* v. *Philadelphia Nat. Bank,* 374 U.S. 321, 353 (1963).

sion into the process of fashioning redistricting plans. Under ordinary circumstances in a section 5 jurisdiction, a federal court which has held invalid the existing districting plan should direct the appropriate authorities to adopt a new plan and submit it to the Attorney General for approval. If the Attorney General interposes an objection to the new plan, no court consideration will be necessary, since such disapproval will automatically preclude implementation of the new plan.[15] Should the Attorney General not object to the new plan, the court will still be obligated to consider whether the plan meets the relevant constitutional standards, but it is likely that in many cases review by the Attorney General will serve to screen out plans which are constitutionally defective because discriminatory on the basis of race.

It is clear that Congress contemplated that the federal courts in section 5 jurisdictions would follow this procedure. The 1975 Senate Report explained that it believed *Connor* v. *Waller*.

> is consistent with the Committee's objective to utilize a form of primary jurisdiction for Section 5 review under which courts dealing with voting discrimination issues should defer in the first instance to the Attorney General or to the District of Columbia District Court.
>
> Thus, for example, where a federal district court holds unconstitutional an apportionment plan which predates the effective date of coverage under the Voting Rights Act, any subsequent plan ordinarily would be subject to Section 5 review. In the typical case, the court either will direct the governmental body to

[15] Unless, of course, the jurisdiction obtains from the United States District Court for the District of Columbia the requisite declaratory judgment.

> adopt a new plan and present it to the court for consideration or else itself choose a plan from among those presented by various parties to the litigation. In either situation, the court should defer its consideration of—or selection among—any plans presented to it until such time as these plans have been submitted for Section 5 review. Only after such review should the district court proceed to any remaining fourteenth or fifteenth amendment questions that may be raised.[16]

The Report noted that

> [a] correct application of Section 5, for example, was demonstrated in *Gaillard* v. *Young* (Civil Action No. 74-1265 D. South Carolina, 1975), which involved the reapportionment of the City Council of Charleston, S.C. The district court invalidated the existing apportionment plan on grounds of "population inequality" and then deferred consideration of any new plan pending Section 5 review. A number of plans were submitted to the Attorney General, who objected to all but one. That one was then submitted to the local district court which concluded that the plan would not meet the population equality requirements of the fourteenth amendment. The court then invited the litigants in the reapportionment case to present plans, and after selecting the one best meeting the population equality requirements of the fourteenth amendment, ordered that plan submitted for Section 5 review. Only after the Attorney General decided not to object to this last plan did the district court order it implemented.[17]

[16] S. Rep. No. 94-295, pp. 18-19.

[17] S. Rep. No. 94-295, p. 19.

The Committee stated that this was the appropriate procedure except where, because of a shortage of time, that procedure is not feasible and the court is forced to fashion by itself an interim plan.[18]

The instant case well illustrates the extent to which a local federal court which does not refer proposed plans to the Attorney General may inadvertently become a vehicle for evading of requirements and protection of section 5. Prior to 1968 Louisiana law did not permit the election of School Board or Police Jury members on an at-large basis, and they were chosen in East Carroll Parish from seven wards. On July 20, 1968, Louisiana adopted legislation permitting parishes to switch to at-large elections, Acts 445 and 561. Under the Voting Rights Act it was unlawful to implement these new provisions until approval pursuant to section 5; for months, however, Louisiana took no steps to comply with section 5 by submitting Acts 445 and 561 to the Attorney General. In the interim the instant lawsuit was filed against East Carroll Parish on July 12, 1968, by a white voter.[19] Counsel for the Parish promptly conceded, for all practical purposes, that the existing plan was illegal, and agreed to comply with a court order to adopt a new one.[20] On November 18, 1968, while

[18] "The one exception where Section 5 review would not ordinarily be available is where the court, because of exigent circumstances, actually fashions the plan itself instead of relying on a plan presented by a litigant. This is the limited meaning of the 'court decree' exception recognized in *Connor* v. *Johnson*, 402 U.S. 690 (1971). Even in these cases, however, if the governmental body subsequently adopts a plan patterned after the court's plan, Section 5 review would be required, *Connor* v. *Waller, supra*. Furthermore, in fashioning the plan, the court should follow the appropriate Section 5 standards, including the body of administrative and judicial precedents developed in Section 5 cases." S. Rep. No. 94-295, p. 19.

[19] A 1.

[20] A 33-40.

implementation of Acts 445 and 561 was still unlawful, and the Voting Rights Act thus forbade the adoption of an at-large plan, the Police Jury adopted just such a plan and asked the district court to "incorporate" that at-large plan in its judgment.[21] The district court, without holding any hearing or considering any alternative, complied with this request on December 2, 1968.[22]

It was not until the spring of 1969 that Louisiana submitted Acts 445 and 561 to the Attorney General. The Attorney General disapproved these statutes on June 26, 1969.[23] On September 10, 1967, the Assistant Attorney General of the United States wrote to the Attorney General from Louisiana reminding him of that objection, noting that East Carroll Parish Police Jury had adopted on November 18, 1968, the very type of at-large plan disapproved, and citing the actual effect of that plan as an example of "diluting the actual or potential voting power of Negro inhabitants." No action was taken by Louisiana to rectify this violation of the Voting Rights Act. On August 7, 1970, the Assistant Attorney General wrote to the President of the East Carroll Parish Police Jury, stressing that the adoption of the 1968 at-large plan was unlawful and that it could not be implemented.[24] Again no action was taken to rectify this violation of the Voting Rights Act.

By July of 1971 the Department of Justice discovered that at least 70 parishes had, like East Carroll, unlawfully adopted and implemented at-large or other reapportion-

[21] A 56.

[22] A 50-51.

[23] The letter of disapproval is set out on pp. 6aa-7aa of the appendix to this brief.

[24] A 58-59.

ment plans under the disapproved Acts 445 and 561.[25] The Department wrote to the local district attorneys, including that for the judicial district encompassing East Carroll Parish, again insisting that such plans could not lawfully be implemented without section 5 approval.[26] At the time this letter was received there was pending before the district court yet another request that the court approve the plan "adopted" by East Carroll Parish in 1968.[27] The position of the Department of Justice was brought to the attention of the district court on July 19, 1971, and intervenors contended that the 1968 plan should be submitted to the Attorney General. On August 2, 1971, the District Court, without seeking or considering the views of the Attorney General or his repeated efforts to obtain submission of the 1968 plan, once again approved the plan.[28] Counsel for the Parish declined to submit the 1968 plan to the Attorney General on the ground that it had been "incorporated in a decree issued by" the district court.[29] Thereafter the state requested that the Attorney General withdraw his objections to Acts 445 and 561, which authorize adoption of at-large plans, by representing that each individual at-large

[25] Hearings Before a Subcommittee of the Senate Judiciary Committee, 94th Cong., 1st Sess., 582 (1975).

[26] A 84-85.

[27] A 60.

[28] A 95-97. The district court's "order" of August 2, 1971, contains no consideration of the section 5 problem.

[29] A 93-94. The district court apparently instructed the Parish, in some *ex parte* manner, that it need not comply with section 5. On July 19, 1971, counsel for the Parish wrote the Court asking "clarification" of how it should respond to the Justice Department's letter. A 83. On July 22, 1971, counsel for the Parish wrote the Department that he had "conferred" with the judge, who had "advised" him that the at-large plan would not have to be submitted. A 94. No formal court proceeding occurred between July 19 and 22, and counsel for intervenors only learned of this conference months later. See A vi.

plan would be subject to section 5 scrutiny since "such plans or changes in the elective process must be submitted by the School Boards to either the District Court for the District of Columbia or to the Attorney General." [30]

This is more than just a case in which a district court inexplicable refused to defer to the primary jurisdiction or otherwise solicit or consider his views. At the very moment when the Attorney General was seeking to assert his jurisdiction over the at-large plan, the Parish sought[31] to destroy that jurisdiction by the expedient of "incorporating" the 1968 plan into a court order. The need to protect the primary authority of an agency "is obviously greatest when the precise issue brought before a court is in the process of litigation through procedures originating in the [agency]" *Federal Power Commission in Louisiana Power and Light Co.*, 406 U.S. 621, 647 (1972). It is unclear why the exercise of federal jurisdiction was necessary in this case at all; the Parish did not seriously dispute in 1968 the invalidity of its old plan and readily agreed to adopt a new one. The sole effect of this litigation seems to have been to obstruct review by the Attorney General of the change to at-large elections in East Carroll Parish; in view of the nominal role played by the white plaintiff in this case, there is reason to suspect that may have been or become its purpose.

There is evidence that, in the wake of this case, an effort was made to evade the requirements of section 5 by means

[30] See appendix, pp. 11aa-15aa. On April 14, 1972, the Attorney General withdrew his objections to Act 561 based on this "assurance" that all such plans would be submitted under section 5 and that the authority granted by Act 561 "would not be used by local jurisdictions to circumvent the requirements of the Voting Rights Act." See appendix, p. 16aa. Manifestly the withdrawal of the objection to Act 561 does not permit East Carroll Parish to adopt redistricting plans without section 5 approval.

[31] Unsuccessfully. See pp. 5-9, *supra*.

of redistricting litigation before the district judge involved in this case. Within three years after the filing of the instant complaint, the district judge "redistricted" at least 8 other parishes in Louisiana by incorporating in a decree a police jury or school board plan which was never cleared under section 5.[32] Although the Attorney General objected to every redistricting plan from Louisiana parish which involved a switch to at-large elections,[33] the judge approved 5 such at-large plans.[34] In one case the judge incorporated into a decree a police jury redistricting plan which had, prior to the litigation, been submitted to and rejected by the Attorney General.[35]

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[32] *Collins* v. *Day*, W.D. La., CA No. 10397 (Order dated July 29, 1968); *Wactor* v. *McKeithen*, W.D. La., CA No. 12663 (Order dated October 18, 1968); *Wyche* v. *Madison Parish Police Jury*, W.D. La., CA No. 14053 (Order dated April 7, 1971); *Humphrey* v. *Lincoln Parish Police Jury*, W.D. La., CA No. 13112 (Order dated July 29, 1970); *Turpin* v. *Natchitoches Parish Police Jury*, W.D. La., CA No. 14659 (Order dated July 13, 1971); *Whatley* v. *Union Parish Police Jury*, W.D. La., CA No. 17019 (Order dated July 29, 1971); *Bell* v. *Tensas Parish Police Jury*, W.D. La., CA No. 16670 (Order dated August 3, 1971); *Pipes* v. *Jackson Parish School Board*, W.D. La., CA No. 14424 (Order dated August 9, 1971). A number of these decisions were subsequently overturned by black intervenors.

[33] See Hearings Before A Subcommittee of the Senate Judiciary Committee, 94th Cong., 1st Sess., 599 (1975).

[34] *Wyche* v. *Madison Parish Police Jury, supra; Humphrey* v. *Lincoln Parish Police Jury, supra; Wactor* v. *McKeithen, supra; Collins* v. *Day, supra;* A 50-51, 97.

[35] *Whately* v. *Union Parish Police Jury, supra.* The plan, which replaced single member districts with three multi-member districts, was adopted by the Police Jury on March 9, 1971, and rejected by the Attorney General on June 18, 1971. On July 29, 1971, the following documents were filed simultaneously in the United States District Court for the Western District of Louisiana: the complaint, an answer admitting the pre-1971 plan was invalid, a joint motion by plaintiff and the defendant police jury asking the district court to adopt a plan identical to that enacted on March 9, 1971, and an order signed by Judge Dawkins ordering that plan into effect. Judge Dawkins' order was signed on July 28, 1971. A certified copy of the record in this case is being lodged with the court.

Ten months after the swift litigation in *Whately*, the plan involved was declared unconstitutional in *Collins* v. *Union Parish Police Jury*, W.D. La., CA No. 17641 (Order dated May 24, 1972).

II.

The Decision of the District Court Is Inconsistent With *Chapman* v. *Meier*, 420 U.S. 1 (1975).

In *Chapman* v. *Meier*, 420 U.S. 1 (1975), the Court held that, in the absence of unusual circumstances, "a court ordered reapportionment plan must avoid the use of multi-member districts." 420 U.S. at 27. The Court noted that multi-member districts involve a number of practical weaknesses. First, as the number of seats within the district increases, the difficulty for the voter in making intelligent choices among candidates increases. Second, residents of particular areas within the district may feel, with justification, that they have no representative specially responsible to them. Third, bloc voting by certain groups of voters may tend to dilute the votes of others. 420 U.S. at 15-16. The decision in *Chapman* reaffirmed the earlier holding in *Connor* v. *Williams*, 404 U.S. 549, 551 (1972), and *Connor* v. *Johnson*, 402 U.S. 690, 692 (1971), that when district courts "fashion apportionment plans, single member districts are preferable to large multi-member districts as a general matter." 420 U.S. at 18.

The *Chapman* rule applies *a fortiori* in the instant case. In *Chapman* only one third of the State Senate was to be chosen from multi-member districts. 420 U.S. at 13. Under the plan approved by the district court in this case all of the 9 members of the Police Jury and all of the 9 members of the School Board are to be chosen at-large. In *Chapman* the average multi-member district had less than

4 representatives; in the instant case the Police Jury "district" and School Board "district" have 9 "at-large" members. Although the state of North Dakota had had an established state policy of electing members of the state House on an at-large basis, the Court refused to permit the extension of that policy to Senate elections. East Carroll Parish, by contrast, had never elected members of the Police Jury and School Board on an at-large basis.

Chapman held that federal courts should order single-member districts unless special circumstances, alternatively characterized by the Court as "particularly pressing features," "pervasive justifications," and "insurmountable difficulties," were present. 420 U.S. at 18, 19, 26; see also *Connor* v. *Johnson*, 402 U.S. 690, 692 (1971). If a court orders a multi-member district or districts it must "articulate precisely why a plan of single-member districts with minimal population variance cannot be adopted." 420 U.S. at 27. The district court in the instant case offered no such justification. In its decision of December 2, 1968, ordering at-large elections, the court gave no explanation for so doing.[36] In its decision of August 2, 1971, the court gave as its reason for preferring the at-large plan that "it offers a zero deviation while all other plans did not."[37] That, of course, does not constitute a special circumstance, since under *all* at-large plans there are no districts to differ in size and thus zero deviation is always present. The district court did not hold, and the counsel for the Parish never urged, that it would not have been possible to fashion a single-member district plan.

If, after the district court held unconstitutional the districting plan in effect prior to 1968, the Parish had enacted

[36] A 50-51.

[37] A 96.

valid legislation creating a single at-large district or any other constitutional plan, the role of the district court would have been at an end and *Chapman* would not control. But both in 1968, when the Police Jury first purported to adopt the at-large plan, and in 1971, when it purported to readopt that plan, the Police Jury had no authority to fashion or approve such an at-large plan, since Acts 445 and 561 which purported to create such authority, had not received the requisite Section 5 approval.[38] Even if Acts 445 and 561 had had section 5 approval in 1968 or 1971, the at-large scheme would not have been valid until and unless that scheme had been approved under section 5, which it never was.

III.

The District Court Did Not Apply the Correct Standard in Determining Whether the At-Large Plan Discriminated Against Black Voters.

In its decree of December 2, 1968, which first approved the East Carroll at-large plan, the district court gave no reasons for the adoption of that particular plan.[39] On July 29, 1971, at the conclusion of the hearing on the plan to be used in light of the 1970 census, the district court issued from the bench a one sentence opinion ordering use of the existing at-large plan.[40] On August 2, 1971, the district court entered a decree, apparently prepared by counsel for the

[38] The unauthorized adoption of the at-large plan by the Police Jury is as insufficient a justification for the district court's order as was the adoption by the North Dakota Legislature of a multi-member district plan rejected by the voters at a subsequent referendum.

[39] A 50-51.

[40] A 179.

Parish,[41] which included a brief statement as to the reasons for ordering at-large elections.[42] Compare *United States* v. *El Paso Natural Gas Co.*, 376 U.S. 651, 657 (1964). Neither the decrees nor the brief opinion are, or purport to be, the findings of fact and conclusions of law required to assist appellate review. Rule 52, Federal Rules of Civil Procedure. To the extent that it is possible to glean the district court's reason for approving the at-large plan, it is clear that the court did not apply the correct standard in determining whether that plan was impermissibly discriminatory.

The key reason which led the district court to conclude that the at-large plan was non-discriminatory seems to have been the fact that 58.7 per cent of the population of East Carroll Parish was black.[43] The court of appeals understood the district court to have applied a *per se* rule that an at-large plan could not dilute minority voting strength whenever non-whites were more than half the population.[44] It cannot, however, be conclusively presumed that blacks can or will have a meaningful opportunity to participate in the political process merely because they are a majority of the total population. Even where blacks are a majority of the total population, they are often a significantly smaller portion of the voting age population; both nationally[45] and

[41] The decree recites that it is "approved as to form" by counsel for the Parish. A 97. It would appear that the Decree was actually typed on the same typewriter used to prepare the briefs filed by counsel for the Parish. *Compare* A 95-97 *with* A 78-82, A 87-89.

[42] A 95-97.

[43] A 96, 179.

[44] Petition 50.

[45] Statistical Abstract of the United States: 1973, Table 38, p. 33. As of 1970 57.9% of blacks were 18 or over, compared to 66.8% of whites.

in East Carroll Parish[46] a larger proportion of the white population is of voting age. Even where blacks are a majority of the voting age population, they may nonetheless be a minority of the registered voters due to past or present discrimination in registration, or in areas such as education which tend to produce low registration. *Graves* v. *Barnes*, 343 F. Supp. 704, 733 (W.D. Tex. 1972), *aff'd sub nom. White* v. *Regester*, 412 U.S. 755 (1973).[47] Even if whites were a minority of registered voters, a variety of stratagems might be successfully employed to prevent the election of black candidates or meaningful participation by black voters.[48] None of these problems were considered by the district court.

[46] Petition 34, n. 1. As of 1970 51.4% of blacks were 18 or over, compared to 61.5% of whites.

[47] In 1975 the United States Commission on Civil Rights reported allegations of harassment of registration activities in East Carroll Parish. The Voting Rights Act: Ten Years After, 187 (1975). The Commission also reported that the registration rate among blacks was lower than that among whites in 64 of Louisiana's 66 parishes, including East Carroll. *Id.*, 366-68. As of 1971 whites constituted a majority of the registered voters in East Carroll Parish, and the lower black registration rate was doubtless due in part to the fact that, prior to 1962, no black resident of the Parish had been permitted to register.

[48] See United States Commission on Civil Rights, The Voting Rights Act: Ten Years After, 97-319 (1975). The cost of a campaign in an at-large district is invariably substantially more expensive than in a single member district. See *Graves* v. *Barnes*, 343 F. Supp. 704, 732 (W.D. Tex. 1972), *aff'd sub nom. White* v. *Regester*, 412 U.S. 755 (1973). In East Carroll Parish, the cost of mailing a letter to every registered voter would be nine times greater in the at-large district than in a single member district. This increased cost will invariably work to the disadvantage of black candidates and their supporters, who are uniformly less affluent than whites. In 1971 the median income of black families in the southern states was 5,414, less than 60% of the white median of $9,706. Statistical Abstract of the United States, 1973, Table 534, p. 329. In 1970 the median income of black families in East Carroll Parish was $2437, compared to $4818 for whites. United States Census: 1970, General Social and Economic Characteristics, Louisiana, Tables 124, 128, pp. 344, 368.

In *White* v. *Regester*, 412 U.S. 755 (1973), this Court sustained a decision invalidating a multi-member district for Bexar County, Texas, on the ground that it discriminated against Mexican-Americans. Mexican-Americans constituted a majority of the county population. See *Graves* v. *Barnes*, 343 F. Supp. 704, 730, 733 (W.D. Tex. 1972). The Attorney General has also recognized that an at-large plan may dilute black votes even though blacks constitute a majority of the population. Among the Louisiana parishes other than East Carroll with a black population majority, three adopted at-large districting plans in 1971 and submitted them for scrutiny under section 5. The Attorney General, after reviewing the political and social realities involved, interposed an objection to each of these plans.[49] It is clear that the district court erred in conclusively presuming that the use of at-large elections could not have an adverse effect on blacks.

So far as can be discerned from the record, this ill-conceived *per se* rule seems to have been the sole basis for the decision of the district court. Although the decree drafted by counsel for the Parish recites in a conclusory manner that the at-large plan does not discriminate against, or dilute the votes of, blacks, this appears to be merely the inevitable conclusion dictated by the court's *per se* rule.[50] There is ample evidence in the record of a long history of racial discrimination in East Carroll Parish, both in voting

[49] The three parishes were St. Helena, Desoto and East Feliciana. See United States Commission on Civil Rights, The Voting Rights Act: Ten Years After, 405 (1975).

[50] A 96. Paragraph 3 of the decree recites that the at-large plan "does not dilute nor discriminate against the black population as the new [sic] voting unit from which officers of the jury and the board are to be elected is composed of 58.7 percent blacks, or a substantial majority of blacks." The term "as" is clearly used to mean "because".

registration[51] and education,[52] a factor of substantial importance under *White* v. *Regester*, 412 U.S. 755, 766, 768 (1973). The district court, sitting two years before *White*, regarded such evidence as irrelevant.[53] Apparently because the district judge believed the population statistics conclusive, neither the decrees nor his remarks from the bench contain any consideration of other factors of central importance under *White* v. *Regester*, including the result of elections held on an at-large basis,[54] the imposition of a "place" rule by means of a residence requirement,[55] or the

[51] Petition, 45.

[52] Petition, 14.

[53] When counsel for intervenor sought to introduce evidence of that history of discrimination, the Court objected, "There is no Court Case holding in the Fifth Circuit or the Supreme Court or otherwise that because of any past political history you have got to give that consideration." A 159.

[54] Prior to the adoption of the at-large system wards 1 and 3 had a particularly large black population. In 1966 a black candidate was elected to membership on the school board from ward 3. In 1967 blacks were elected to the police jury from wards 1 and 3. In 1970, under the at-large plan, black candidates for the school board from wards 1 and 3 were both defeated. Letter of Jerris Leonard to Hon. Jack Gremillion, September 10, 1969, appendix, pp. 9aa-10aa. Within the town of Lake Providence, which includes bulk of the Parish population, the mayor and alderman, chosen on at-large basis, were all white. A 121; see Brief for Petitioner, 3.

[55] In *White* candidates from a multi-member district were required to run for a specified "place" on the ticket, thus reducing the election to a head-to-head contest. 412 U.S. at 766. This prevents blacks from using single-shot voting, and decreases the likelihood that white votes will be dissipated among a large number of white candidates. The at-large plan accomplished the same result by requiring, with the exception of Ward 3, that a single member be elected by the population at-large to represent each ward, of which the candidate must be a resident. A 50, 97. The Attorney General in enforcing section 5 has on 26 occasions objected to the use of the place or numbered post system and on 12 occasions disapproved the use of such a residency requirement for at-large elections. United States Commission on Civil Rights, The Voting Rights Act: Ten Years After, 207-210, 400-409 (1975).

effect of the majority vote requirement[56] and anti-single shot rule.[57] It is thus clear that the district court, in approving the at-large plan, did not apply the standards established by *White* v. *Regester*.

Intervenors maintain that, for reasons articulated by the court of appeals, the record as it existed in August, 1971, contained sufficient evidence of dilution to require disapproval of the at-large plan.[58] Since the district court's decision of that date, however, circumstances have changed. Several elections have been held, the significance of which is a matter of dispute.[59] More than four years of experience have been gained as to the extent of slating and pos-

[56] 412 U.S. at 766. Such a provision assures that, if white votes are divided among several white candidates, a black candidate cannot win with a plurality. The Attorney General has repeatedly disapproved the imposition of such a requirement as discriminatory. United States Commission on Civil Rights, The Voting Rights Act: Ten Years After, 206, 400-409 (1975). The at-large plan approved by the district court was automatically subject to the state majority vote requirement. La. Rev. Stat. Ann., art. 18, § 18: 358 (1969). In the 1971 Democratic Primary for Police Jury, a black incumbent, Otis L. Virgil, sought election from Ward 3, which chooses 3 members. At the first election on November 6, 1971, Virgil, running against 6 white opponents, received the second highest number of votes cast. Because of the majority requirement, however, that was not sufficient for the nomination. A second primary was held on December 18, 1971, for two of the seats (one candidate at the first election having won a majority); with two fewer whites in the race Virgil came in third and thus lost. See Exhibit A to Supplemental Brief of Appellees, pp. 7-10.

[57] See La. Rev. Stat. Ann., art. 18, § 18:351 (1969); Petition 57, n. 25; United States Commission on Civil Rights, The Voting Rights Act: Ten Years After, 206-07 (1975).

[58] See Petition 52-60.

[59] A number of the at-large seats were won by black candidates. Petitioners maintain this demonstrates the non-discriminatory nature of the at-large plan; intervenor contends these victories were engineered by white politicians for the purpose of influencing the instant litigation. Since the elections occurred while this case was on appeal, the record contains nothing which would enable this Court to determine which contention is correct.

sible unresponsiveness of officials chosen under the at-large plan. The practice of affirmative racial discrimination may have waxed or waned since 1971. Doubtless there have been changes in population and voter registration over this period of time. Under these circumstances it would be unnecessary and inappropriate for the Court to decide how the district court, applying the correct standards, should have resolved this case in 1971. Any such retrospective decision would be advisory in nature, since on remand either party could seek to alter an injunctive order based on 1971 facts in view of intervening developments. To the extent that disposition of this case requires resolution of the constitutional issue, that should be done in the first instance by the district court on remand, applying the correct legal standards to the circumstances which now exist.

IV.

This Appeal Is Moot.

This matter arises on appeal from an order entered on August 2, 1971, by the district court directing that elections for the Police Jury and School Board be held on an at-large basis. A 97.

Subsequent to the entry of that order, and while the appeal was pending before the Fifth Circuit, several developments occurred. Defendants' witnesses in July, 1971, had testified that the use of at-large elections would not result in the defeat of the incumbent black Jurymen, but would lend to the election of more minority officials. A 108, 118. In November, 1972, however, both incumbent blacks were defeated, and whites captured 8 of the 9 seats on the Police Jury. Second, in the months after the August, 1971, decree, the Attorney General repeatedly interposed objections to proposals from various Louisiana parishes to switch from single-member districts to at-large or multi-member dis-

tricts.[60] Third, in *Hall* v. *Issaquenna County Board of Supervisors,* 453 F.2d 404 (5th Cir. 1971), the Fifth Circuit correctly indicated that federal courts were to avoid, where possible, the use of at-large elections, and should take care lest resort to redistricting litigation be used to subvert the Voting Rights Act.[61]

In view of these developments, intervenor moved the district court for an order modifying the injunction of August 2, 1972. On March 27, 1972, the district court concluded that at-large elections in East Carroll Parish "operate to the disadvantage of blacks, and places a serious and unnecessary handicap to effective participation of the newly enfranchised black citizens". The Court also expressed doubts as to the propriety of ordering at-large elections on other than a temporary basis, especially in view of the Attorney General's repeated disapproval of such plans in similar Louisiana parishes. The district court therefore granted intervenor's motion, and ordered that future elections be held on a ward system proposed by intervenor.[62]

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[60] United States Commission on Civil Rights, The Voting Rights Act. Ten Years After, pp. 404-406 (1975). Between July 1971 and December 1971 the Attorney General disapproved 3 at-large police jury plans, 1 at-large school board plan, 3 multi-member district police jury redistricting plans and 2 multi-member school board redistricting plans, all from Louisiana parishes.

[61] The district court in *Hall* had ordered at-large elections; plaintiff appealed, urging that single member districts should be ordered where possible and that any plan required approval under section 5. The Fifth Circuit, in an unreported decision, sustained these contentions and ordered that "upon the approval of a legally sufficient plan by the district court, and, in any event, not later than May 16, 1972, the district court shall order that a final election be held under the laws of the state of Mississippi in the five (5) respective districts (beats) of Issaquenna County for the selection of a Board of Supervisors in compliance with the Voting Rights Act of 1965, 42 U.S.C. §§1973, et seq., and in compliance with the one-man-one-vote mandate of the United States Supreme Court." Order dated July 29, 1971; slip opinion, p. 2.

[62] The district court's order is set out in the appendix to this brief, 1aa-5aa.

In view of this new order, intervenor moved the Court of Appeals to dismiss his appeal from the order of August 2, 1971, and to remand the case for appropriate further proceedings. The defendants appealed from the March 27, 1972, decision. This new appeal and motion were consolidated with the first appeal. The original panel considering this case on appeal divided as to the significance of the March 27 order; two members of the panel concluded it was void for want of jurisdiction, the third member thought that the case should be remanded because the district court had become "dissatisfied with its own choice of a plan."[63] The Fifth Circuit, *en banc,* did not consider the March 27 decision.

Intervenors suggest that, in view of the district court's order of March 27, 1972, this appeal is now moot. The district court had the inherent power to modify its own injunction. *United States* v. *Swift & Co.,* 286 U.S. 106, 114 (1932).[64] The exercise of this power presents certain complications when the injunction whose modification is sought is also the subject of a pending appeal. Under such circumstances the established and preferred practice is for the party seeking the modification to first do so in the district court; if the district court indicates it is inclined to grant

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[63] Petition, 29-30, 41.

[64] A "continuing decree of injunction directed to events to come is always subject to adaptation as events may shape the need." See also *Milk Wagon Drivers Union* v. *Meadowmoor Dairies,* 312 U.S. 287, 298 (1941); *Pennsylvania* v. *Wheeling & Belmont Bridge Co.,* 18 How. (59 U.S.) 421 (1885). This authority is also encompassed by the provision of Rule 60(b)(5), Federal Rules of Civil Procedure, permitting relief from a judgment where "it is no longer equitable that the judgment have prospective application." 7 Moore's Federal Practice ¶ 60.26[4]. The 1971 proceeding in the instant case resulted from a suggestion by the court that it might be appropriate to modify its 1968 order in view of the 1970 Census. Letter of Hon. Ben Dawkins, February 17, 1971.

the modification, the party then asks the appellate court to remand the case.[65] That is, in essence, the procedure that was followed in the instant case.

The instant appeal is, for all practical purpose, moot. The sole relief intervenors seek on appeal is abolition of the at-large plan. The district court has now indicated its determination to order future elections on a ward basis. Regardless of whether, as intervenors contend, the district court was obligated to so rule in the first instance, it certainly had and has the authority to order elections on a ward basis. There is nothing to be accomplished by resolving petitioners' assertion that the August 2, 1971 order was not "an abuse of discretion," [66] since the district court no longer wishes to exercise its discretion in that manner. Nor should the Court undertake the academic exercise of considering whether the findings contained in the August 2, 1971 order, long since repudiated by the district court, could have been sustained. This Court's powers of judicial review are exercised as a matter of necessity; it is inappropriate to pass on the propriety of an order disavowed over two years ago by the district court which first issued it, just as it would be inappropriate to consider the constitutionality of a statute which had been repealed. *Sanks* v. *Georgia*, 401 U.S. 144 (1971); *Board of Flour Inspectors* v. *Glover*, 160 U.S. 170 (1895).

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[65] At least eight circuits have adopted this approach. *Innarelli* v. *Morton*, 463 F.2d 174 (3rd Cir. 1972); *Canadian Ingersoll-Rand Co.* v. *Peterson Products, Inc.*, 350 F.2d 18 (9th Cir. 1965); *Aune* v. *Reyndeis*, 344 F.2d 835 (10th Cir. 1965); *Krock* v. *Electric Mortogate Co.*, 339 F.2d 73, 74, n.1 (1st Cir. 1964); *Ryan* v. *U.S. Lines Co.*, 303 F.2d 430 (2d Cir. 1961); *Banks Mfg. Co.* v. *Ransburg Electric-Coating Corp.*, 281 F.2d 252 (7th Cir. 1960); *Ferrell* v. *Trailmobile, Inc.*, 223 F.2d 697 (5th Cir. 1955); *Smith* v. *Pollin*, 194 F.2d 349 (D.C. Cir. 1952); see also Wright and Miller, Federal Practice and Procedure, §2873.

[66] Brief for Petitioner, p. 17.

CONCLUSION

For the above reasons the judgment of the Court of Appeals should be affirmed; in the alternative, the order of the district court entered August 2, 1971, should be vacated, and the case remanded with instructions that the district court refer any proposed districting plan to the Attorney General for review under section 5 of the Voting Rights Act.

STANLEY A. HALPIN, JR.
Suite 1212
344 Camp Street
New Orleans, Louisiana 70103

JACK GREENBERG
ERIC SCHNAPPER
Suite 2030
10 Columbus Circle
New York, New York 10019

Counsel for Respondent

APPENDIX

Order of United States District Court

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

Civil Action No. 13927

CHARLES F. ZIMMER,
Plaintiff,

STEWART MARSHALL,
Plaintiff-Intervenor,

versus

JOHN J. McKEITHEN, et al.,
Defendants.

On August 7, 1971 this Court entered an order approving at-large parish-wide elections for the Police Jury and School Board of East Carroll Parish. Subsequent decisions, particularly of the United States Court of Appeals for the Fifth Circuit, have convinced this Court that at-large elections in for a parish with a sizable black population and a history of denial of the vote to black citizens, is constitutionally impermissible and is without valid Louisiana Statutory authority. Having received the various alternative plans proposed by plaintiff-intervenor and defendants at the July 29, 1971 hearing, the Court finds that the nine-member four district plan submitted by plaintiff-intervenor is far superior to all other plans submitted by plaintiff-intervenor is far superior to all other plans submitted both from the one-man one-vote point of view, and from the point of view of avoiding racial gerrymandering. Accor-

dingly, the Court makes the following finding of facts and conclusions of law:

1. That according to the 1970 United States Census, East Carroll Parish has a total population of 12,884 persons of which number 7,568 are blacks and 5,306 are whites and other classifications; that the black population of East Carroll Parish, Louisiana comprises 58.7% of the total population.

2. That until very recently, no blacks had been allowed to register to vote in the East Carroll Parish. As this Court noted in *United States* v. *Manning*, 205 F. Supp. 172 (W.D. La., 1962), as of 1962 not a single black person had been registered in East Carroll Parish since 1922.

3. That prior to at-large elections, the single-member ward system of elections has produced two black members of the Police Jury and one black member of the School Board.

4. That although at-large elections in East Carroll Parish may not entirely preclude the possibility of a black being elected, it operates to the disadvantage of blacks, and places a serious and unnecessary handicap to effective participation of the newly enfranchised black citizens of East Carroll Parish.

5. The fact that East Carroll Parish did not attempt to change to at-large elections until blacks were registered and had been elected from certain wards, supports the Court's finding that at-large elections in East Carroll Parish are racially discriminatory in purpose or effect.

6. Although many parishes in Louisiana have attempted to change to at-large elections after blacks became registered in significant number due to the Voting Rights Act of 1965, none of these attempts have passed federal scrutiny. In all instances known to this Court, the at-large plans have been struck down either by the Attorney General of the United States acting pursuant to Section 5 or by the Courts.

7. It is questionable in view of the United States Attorney General's objection to Louisiana Acts 445 and 561 of 1968 whether the defendants have authority under Louisiana Law to adopt an at-large plan and whether the Court would have the discretion to order such a plan as other than a temporary[1] measure.

8. Given the long history of disenfranchisement of blacks in East Carroll Parish, the timing of the at-large plan, and the serious obstacles it places to the election of blacks in East Carroll Parish, the Court finds that the at-large plan is violative of the Fifteenth Amendment of the United States Constitution.

9. In *Hall* v. *Issaquena County Board of Supervisors*, the district court allowed at-large elections. The Fifth Circuit by order of July 29, 1971 ordered that the District Court order elections by election districts (beats). By *per curiam* opinion of December 29, 1971, 453 F.2d 404 (1971) the case was returned to the District Court with instruc-

[1] *Sheffield* v. *Itawamba County*, 439 F.2d 35 (5th Cir., 1971) appears to allow the district court discretion in a non-racial context and as a temporary expedient. However, since this Court finds the East Carroll at-large plan violative of the Fifteenth Amendment, is it unnecessary to reach the *Sheffield* question.

tions to proceed in accordance with the July 29, 1971 order. There is no doubt after *Hall* that at-large elections are impermissible in East Carroll Parish.

Accordingly, IT IS ORDERED that the East Carroll Parish Police Jury and School Board, be and hereby are apportioned as described as follows and with attached maps:

Voting District	*Number of Representatives*	*Enumeration Districts*	*Population*	*% Black*	*% Deviation*
1	1	2, 9 (part west of highway #596)	1,445	44.6%	+0.09%
2	2	1, 4, 5, 3 (north part), 9 (part east of highway #596)	2,830	61.8%	—1.19%
3	4	6, 7, 8, 10 12, 3 (south part)	5,631	69.3%	—1.78%
4	2	11, 13, 14, 15	2,978	43.0%	+3.98%

Ideal Population:	1,432
Maximum Deviation:	3.98%
Average Deviation:	1.95%
Total Deviation:	5.76%

MAP COLOR CODE

Voting District	*Color*
1	Red
2	Green
3	Yellow
4	Orange

IT IS FURTHER ORDERED that the Police Jury elections conducted under the at-large plan are null, void and of no effect.

IT IS FURTHER ORDERED that elections for *all* members of the East Carroll Police Jury and School Board shall be conducted under the districting plan contained in this order at the regularly scheduled 1972 Congressional elections commencing in August, 1972. Terms of office for the School Board members shall be staggered as required by Louisiana Law, with candidates running for two, four and six terms in the 1972 elections. Selection of two, four and six year seats on the School Board shall be determined by lot at a public drawing to be held before commencement of the qualifying period. Members of the Police Jury and School Board who are elected in the 1972 elections shall assume office as soon as the elections are final. If necessary members who are presently holding office on the Police Jury and School Board will hold over in office, until the 1972 elections are final.

THUS DONE and SIGNED at Shreveport, Louisiana this 27th day of March, 1972.

/s/ BEN C. DAWKINS, JR.
United States District Judge

United States District Court
Eastern District of Louisiana

This is to certify that the above anud foregoing contained on this and preceding 7 pages is a true and correct copy of the original.

3-27-72
ANTON L. CURTIS
Clerk

By /s/ TROY S. SANDERLIN
Deputy Clerk

Letter Dated September 26, 1969

June 26, 1969

The Honorable Jack P. F. Gremillion
Attorney General of Louisiana
State Capitol Building
Baton Rouge, Louisiana 70804

Dear Mr. Attorney General:

This is in reference to Act 445 and Act 561 enacted by the Louisiana State Legislature at the 1968 Regular Session, copies of which were submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965.

We have carefully examined and considered this matter. These amendments place in the hands of existing police juries and school boards broad discretion in redrawing the boundaries of police jury wards and establishing special school board election districts, and in determining the manner of electing members of those particular bodies. On the basis of the information before me, I have concluded that the new procedures that both acts provide for have had and, if widely implemented, will have the effect of discriminating against Negro voters on account of their race, and of denying to them an effective voice in the selection of police jury and school board members. In the absence of information showing the contrary I must, on behalf of the Attorney General, interpose objection to the implementation of Acts 445 and 561.

Should you wish to present justification for the changes in election procedures provided for by the acts, or proposed procedures which will insure against racially discriminatory effects in their implementation, the Attorney General

will gladly reconsider his position. Of course, as provided for by Section 5 of the Voting Rights Act, you have the alternative of instituting an action in the United States District Court for the District of Columbia for declaratory judgment that such changes in election and voting procedure do not have the purpose and will not have the effect of denying and abridging the right to vote on account of race or color.

Sincerely,

Jerris Leonard
Assistant Attorney General
Civil Rights Division

Letter Dated September 10, 1969

Sep 10 1969

Honorable Jack P. F. Gremillion
Attorney General of Louisiana
State Capitol Building
Baton Rouge, Louisiana 70804

Dear Mr. Attorney General:

This is in reply to your letter of July 1, 1969, in which you requested that we delineate our specific objections to the implementation of Acts 445 and 561 of the 1968 Regular Session of the Louisiana Legislature.

Our examination of this legislation discloses that Act 445 removes the previous requirement for the creation of a minimum number of police jury wards within a parish, thus permitting a police jury to redistrict a parish into one parish-wide ward. Therefore, we construe this Act as permitting a change from ward to at-large voting in police jury elections. Act 561 specifically provides for a change to at-large voting for school board members.

In the case of *Fairley* v. *Patterson*, 393 U.S. 544 (1969) involving a change from district to at-large voting for county supervisors in Mississippi, the Supreme Court held that such a change constitutes a "voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting" within the meaning of Section 5 of the Voting Rights Act of 1965. In its opinion, the Court stated as follows:

> The right to vote can be affected by a dilution of voting power as well as by an absolute prohibition of casting a ballot. • • • Voters who are members of a racial minority might well be in the majority in one district, but in a decided minority in the county as a whole. This type of change could therefore nullify their ability to elect the candidate of their choice just as would prohibiting some of them from voting.

Based upon the 1960 Census, we found that of the 64 parishes in Louisiana, only 5 have Negro majority voting age populations. Of the 59 parishes having white majority voting age populations, 34 have a combined total of 109 wards where the Negro population is in the majority. Thus, it is apparent that a change from ward to at-large voting in these parishes would have the effect of diluting the actual or potential voting power of the Negro inhabitants.

An example of such dilution has taken place in East Carroll Parish. Our available statistics show that in that parish, the number of registered white voters exceeds the number of registered Negro voters. However, in several of the wards, including wards 1 and 3, Negro voters outnumber white voters. Prior to a recent reapportionment suit (*Zimmer* v. *McKeithen*, Civil Action No. 13927, W.D., La., December 2, 1968), all police jury and school board members were elected by the voters of their respective wards. According to our records, in 1966, a Negro candidate was elected to membership on the school board from ward 3. In 1967, two Negroes were elected to the police jury from wards 1 and 3.

On November 18, 1968, the East Carroll Parish Police Jury, in special session, adopted a resolution which provided that all new police jurors be elected at-large throughout the parish. This resolution was incorporated in the reapportionment order and extended thereby to include all new school board members. Since this decision, two Negro

Letter Dated September 10, 1969

candidates for school board offices, one from ward 1 and the other from ward 3, have been defeated in at-large elections.

We furthe note that under the provisions of Act 561, any concentration of Negro voting power would be subject to dilution by the creation of special school board election districts, the boundaries of which need have no relation to existing or future ward boundaries.

Since neither of the Acts contain any safeguards against abuses, and in view of the opportunities afforded by the Acts to discriminate against Negro voters, we must reaffirm our objections to their implementation. However, we reiterate that should you wish to present justification for the changes or propose procedures which will insure against racially discriminatory effects in their implementation, the Attorney General will gladly reconsider his position.

Sincerely,

JERRIS LEONARD
Assistant Attorney General
Civil Rights Division

Letter Dated February 21, 1972

STATE OF LOUISIANA
DEPARTMENT OF JUSTICE
BATON ROUGE
70804

JACK P. F. GREMILLION
ATTORNEY GENERAL

February 21, 1972

Honorable John F. Ward, Jr.
Attorney at Law
206 Louisiana Avenue
Baton Rouge, Louisiana 70802

Re: LRS 17:71.1 through 71.6 (Act. 561, 1968 as amended by Act 319 of 1970)

Dear Mr. Ward:

Pursuant to the request contained in your letter of February 9, 1972, I have reviewed Act 561 of 1968 as amended by Act 319 of 1970, which is incorporated in the Revised Statutes as LRS 17:71.1 through 71.6 and previous correspondence with the United States Attorney General and am satisfied that the language contained in Section 71.6 of Title 17 of the Louisiana Revised Statutes setting forth the intent and purpose of the Legislature in enacting Act 561 of 1968, as amended by Act 319 of 1970, requires any reapportionment plan adopted by a School Board under authority of said act to comply with applicable decisions of the United States Supreme Court regarding reapportionment and non-discriminatory practices and procedures in the elective process.

Letter Dated February 21, 1972

It is my opinion that although local School Boards may, in reapportioning themselves, provide special election districts different from police jury wards and may also provide for more than one member to be elected at large from such districts (multi-member districts), it is implicit that under these acts this must be accomplished in a manner which complies with applicable Supreme Court decisions as to the one man-one vote rule and nondiscriminatory practices and procedures in the elective process.

It is further my opinion that Section 5 of the Voting Rights Act of 1965 (42 USCA 1973(c)) requires each local School Board to submit proposed changes in their election procedure, including reapportionment plans, to either the United States District Court for the District of Columbia for a declaratory judgment or to the United States Attorney General for consideration, in compliance with the terms and procedures set forth in that Act and applicable decisions of the United States Supreme Court prior to any implementation of such change. See United States Supreme Court decision in *Perkins* v. *Matthews*, 915 S. Ct. 431 (1971).

With kindest personal regards, I am

Very truly yours,

/s/ JACK P. F. GREMILLION
Jack P. F. Gremillion
Attorney General of the State of Louisiana

JPFG:eb
cc: Governor John J. McKeithen
Mr. James D. Prescott
Mr. William J. Dodd

Letter Dated February 22, 1972

LAW OFFICES
BURTON, ROBERTS & WARD
BATON ROUGE, LOUISIANA

206 LOUISIANA AVENUE
BATON ROUGE, LOUISIANA 70802
TELEPHONE: 344-0527

February 22, 1972

PERSONAL

Mr. David Norman
Justice Department
Washington, D.C.

Re: Reconsideration of Previously Interposed Objection to Act 561 of 1968 as amended by Act 319 of 1970 of Louisiana Legislature

Dear Mr. Norman:

Please have reference to our previous correspondence and conferences regarding a reconsideration of the objection previously interposed by the Attorney General to Act 561 of 1968 of Louisiana Legislature as amended by Act 319 of 1970 (LRS 17:71.1-71.6).

In connection therewith I hereby enclose a copy of an opinion of the Attorney General of the State of Louisiana which clearly holds that:

(1) These Acts require that reapportionment plans or election procedure changes adopted by School Boards

Letter Dated February 22, 1972

pursuant thereto must comply with United States Supreme Court decisions regarding reapportionment and non-discriminatory practices in the elective process; and

(2) That such plans or changes in the elective process must be submitted by the School Boards to either the District Court for the District of Columbia or to the Attorney General in compliance with the procedures set forth in Section 5 of the Voting Rights Act of 1965.

In view of this opinion of Louisiana's Chief Legal Officer, we respectfully request the Attorney General to reconsider his previously interposed objection to the above mentioned Acts of the Louisiana Legislature.

Many School Boards are attempting to voluntarily comply with Section 5 of the Voting Rights Act and reapportionment decisions of the Supreme Court but are unable to do so due to the decision in *Dyer* v. *Love,* 307 F.Supp. 974 (1969), as interpreted by your office, which casts doubt as to the authority of such boards to reapportion as long as the Attorney General's objection to these acts remains in effect.

Almost all School Boards in Louisiana are scheduled to have elections for approximately one-third of their members in primary elections this summer. It is essential that they accomplish reapportionment prior to those elections.

Consequently, we would appreciate your reconsidering your previous objection to the referred to Louisiana Legislation and, as time is of the essence, will appreciate a determination by you prior to March 15, 1972.

Letter Dated February 22, 1972

If you have any questions concerning this matter or if we may be of assistance in expediting same, please advise.

With kindest personal regards, I am,

Very truly yours,

BURTON, ROBERTS & WARD
/s/ JOHN F. WARD, JR.
John F. Ward, Jr.

JFW,Jr./sd

Enclosure

cc/enc: Mr. John Pleasant
P. O. Box 1818
Shreveport, Louisiana

Mr. James D. Prescott
Louisiana School Board Association
P. O. Box 53217, Istrouma Station
Baton Rouge, Louisiana 70805

Letter Dated April 14, 1972

April 14, 1972

Mr. John F. Ward, Jr.
Burton, Roberts & Ward
Attorneys at Law
286 Louisiana Avenue
Baton Rouge, Louisiana 70802

Dear Mr. Ward:

This is in reply to your letter of February 22, 1972, in which you request that the Attorney General withdraw his objection, interposed pursuant to the Voting Rights Act of 1965, to Act 561 of the 1968 Louisiana Legislature, as amended.

We have reviewed and reanalyzed the matter in light of the opinion of the Attorney General of Louisiana which you forwarded with your request. As I read that opinion, it interprets Act 561, as amended, to incorporate the requirement that local boards, in reappointing themselves, must comply with Supreme Court decisions regarding reapportionment and nondiscrimination in the elective process and that such reapportionment plans must be submitted pursuant to Section 5 of the Voting Rights Act prior to implementation. Based upon this interpretation of the Act, the Attorney General will withdraw his objection provided the interpretation of the State Attorney is disseminated to all school boards in the state. Therefore, I would appreciate your advising me as soon as this has been done and of the manner in which the communication was made.

Sincerely,

EDWIN L. NORMAN
Assistant Attorney General
Civil Rights Division

Letter Dated April 18, 1973

April 18, 1973

Honorable William J. Guste, Jr.
Attorney General
State of Louisiana
Department of Justice
Post Office Box 44005
Baton Rouge, Louisiana 70804

Attention: Kenneth C. DeJean, Chief Civil Division

Dear Mr. Attorney General:

This is to acknowledge receipt of your letter dated March 14, 1973 by this Department on March 26, 1973.

Members of my staff are presently making a preliminary analysis of the 149 acts specified in your letter to determine, for each of the acts, whether the information we presently have is sufficient to enable us to properly evaluate the act under Section 5 or, alternatively, whether the information we have is insufficient to allow such an evaluation of the act, in which case it will be necessary for us to request additional information relevant to the act as provided by the procedural guidelines for the administration of Section 5, 28 C.F.R. § 51.18, a copy of which is enclosed.

cc: Public File (Rm. 920)

We note that on page 2 of your March 14 letter you request that we treat as submitted under Section 5, and accordingly consider, any acts to which Section 5 applies which we may discover in the volumes you forwarded to us, in addition to those acts enumerated in your letter.

Letter Dated April 18, 1973

We believe that submission of enactments under Section 5 may not be perfected unless the legislation in question is specifically identified and particularly submitted for Section 5 review. See *Allen* v. *State Board of Elections,* 393 U.S. 544, 571; *Clayton* v. *North Carolina State Board of Elections,* 317 F. Supp. 915, 919 (E.D. N.C. 1970). We may not, therefore, unilaterally consider and evaluate pursuant to Section 5 legislation which may be contained in the volumes of state enactments but which are not individually designated in your letter of submission. We will, however, notify you of any such enactments we may discover, and, afford you the opportunity to submit the acts for review by the Attorney General or to initiate a suit for declaratory judgment in the United States District Court for the District of Columbia, as provided by Section 5.

In addition, you request in your letter of March 14 that we reconsider our objection to "Act 445 of 1969". Your letter dated March 21 seeks reconsideration of "Act 445 of 1970". It may be that you have reference to Act 445 enacted by the Louisiana legislature at the 1968 regular session, and to which the Attorney General objected on June 26, 1969.

The procedure for requesting reconsideration is set out in the Section 5 guidelines, 28 C.F.R. § 51.23. Should you wish to present information not previously available to you regarding Act 445, as addressed in the guidelines, we will be pleased to entertain your request. We note, however, that Attorney General Gremillion corresponded with us regarding our objection of June 26, 1969 in his letter of July 1, 1969; we responded in our letter dated September 10, 1969. In this connection, we also received a letter dated January 21, 1971, from Mr. John F. Ward, Jr., which

Letter Dated April 18, 1973

indicates that a carbon copy was sent to Attorney General Gremillion, offering an explanation of the facts surrounding the enactment of Act 445, the effect in Louisiana of our objection, and arguments to support a withdrawal of the objection.

As you may know, on April 14, 1972 the Attorney General withdrew his objection to Act 561, a companion bill to Act 445 involving school districts in Louisiana, also enacted in the 1968 Regular Session of the Louisiana Legislature. Prior to our letter of April 14, 1972, we had suggested that Act 561 would not continue to be objectionable if some safeguard or assurance would be provided by the State of Louisiana that the authority granted by Act 561 could not be used by local jurisdictions to circumvent the requirements of the Voting Rights Act. Such a safeguard was provided in a letter dated February 21, 1972 from Attorney General Gremillion to Mr. Ward. A copy of that letter, and of our letter of April 14, 1972, is enclosed. Should you take similar action concerning Act 445 we will, upon our receipt of such information, re-examine our position with regard to Act 445 in light of your action.

If we can assist you in gathering information necessary to make your submission complete or if you wish to discuss the matter, please do not hesitate to call on me or my staff. Robert R. Rush, the attorney assigned to this matter, can be reached by caling 20[illegible]739-3882.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

Supreme Court, U. S.
FILED
JAN 7 1976
MICHAEL RODAK, JR., CLERK

No. 73-861

In the Supreme Court of the United States

OCTOBER TERM, 1975

EAST CARROLL PARISH SCHOOL BOARD AND EAST CARROLL PARISH POLICE JURY, PETITIONERS

v.

STEWART MARSHALL

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

ROBERT H. BORK,
Solicitor General,
J. STANLEY POTTINGER,
Assistant Attorney General,
BRIAN K. LANDSBERG,
JOHN C. HOYLE,
JESSICA DUNSAY SILVER,
Attorneys,
Department of Justice,
Washington, D.C. 20530.

INDEX

	Page
Question presented	1
Statute involved	2
Interest of the United States	4
Statement	4
Argument	12
I. Introduction and summary	12
II. The courts below erred in considering the reapportionment plan of the East Carroll Parish Police Jury and School Board prior to its submission and clearance pursuant to Section 5 of the Voting Rights Act of 1965	15
A. Section 5 affords special protection for Fifteenth Amendment rights	15
B. Congress intended Section 5 to apply to all changes in voting laws	18
C. The exception to Section 5 encompassed by *Connor* v. *Johnson* does not apply to this case	20
Conclusion	30
Appendix A	1A
Appendix B	3A
Appendix C	6A
Appendix D	7A
Appendix E	9A

CITATIONS

Cases:

Allen v. *State Board of Elections*, 393 U.S. 544	16, 18
Blonder-Tongue Labs. v. *University Foundation*, 402 U.S. 313	26
California v. *Federal Power Commission*, 369 U.S. 482	29
Carnation Co. v. *Pacific Westbound Conference*, 383 U.S. 213	29
Chapman v. *Meier*, 420 U.S. 1	25, 27, 30
Connor v. *Johnson*, 330 F. Supp. 506	21

211-689—75——1

	Page
Connor v. *Johnson*, 402 U.S. 690	10, 12, 14, 16, 18, 21, 22, 24, 26
Connor v. *Johnson*, 330 F. Supp. 521	22
Connor v. *Williams*, 404 U.S. 549	22, 25, 27
Connor v. *Waller*, 396 F. Supp. 1308	23
Connor v. *Waller*, 421 U.S. 656	14, 17, 18, 22, 23, 24, 28, 29, 30
Georgia v. *United States*, 411 U.S. 526	13, 18, 19, 20, 30
Gomillion v. *Lightfoot*, 364 U.S. 339	12
Harper v. *Levi*, 520 F. 2d 53	16, 30
Louisiana v. *United States*, 380 U.S. 145	5
National Labor Relations Board v. *Bell Aerospace Co.*, 416 U.S. 267	20
Perkins v. *Matthews*, 400 U.S. 379	16, 18
Red Lion Broadcasting Co. v. *Federal Communications Commission*, 395 U.S. 367	20
Reynolds v. *Sims*, 377 U.S. 533	12, 13, 17, 25, 27
Ricci v. *Chicago Mercantile Exchange*, 409 U.S. 289	29
Sims v. *Amos*, 365 F. Supp. 215, affirmed *sub nom.* *Wallance* v. *Sims*, 415 U.S. 902	16
South Carolina v. *Katzenbach*, 383 U.S. 301	22
Constitution and statutes:	
United States Constitution:	
Fourteenth Amendment	7, 9, 12, 13, 23, 27, 28, 29
Fifteenth Amendment	9, 12, 13, 15, 16, 18, 23, 28, 30, 31
Voting Rights Act of 1965, 79 Stat. 437, as amended, 42 U.S.C. 1973, *et seq*	5
Section 4(a), 42 U.S.C. 1973b(a)	20
Section 4(f)(2), 42 U.S.C. 1973b(f)(2)	23
Section 5, 42 U.S.C. 1973c	*passim*
Section 6, 42 U.S.C. 1973d	5
La. Acts 1968, No. 445, codified at La. Rev. Stat. §§ 33:1221, 33: 1224 (1974)	6
La. Acts 1968, No. 561, codified at La. Rev. Stat. §§ 17:71.1–17:71.6 (1974)	6
La. Acts 1940, Extra Sess., No. 12, § 1, codified at La. Rev. Stat. § 33:1221 (1950)	6
La. Acts 1894, No. 161, Sec. 1	6
La. Rev. Stat. § 17–52 (1950)	6

	Page
La. Rev. Stat. §§ 33:1222–33:1224 (1950)	6
La. Rev. Stat. § 33:1236 (1950)	6
Miscellaneous:	
30 Fed. Reg. 9897	20
30 Fed. Reg. 9971	5
General Population Characteristics, U.S. Dept. of Commerce, Bureau of the Census, Louisiana, 1970, p. 107	4
Hearings on Extension of the Voting Rights Act of 1965 before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary, 94th Cong., 1st Sess. (1975)	11
Hearings on S. 1564 before the Senate Committee on the Judiciary, 89th Cong., 1st Sess., Part 1 (1965)	15–16
H.R. Rep. No. 91–397, 91st Cong., 1st Sess. (1970)	16
H.R. Rep. No. 94–196, 94th Cong., 1st Sess. (1975)	19
S. Rep. No. 94–295, 94th Cong., 1st Sess. (1975)	16, 18, 19, 20, 22, 25

In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 73-861

EAST CARROLL PARISH SCHOOL BOARD AND EAST CARROLL PARISH POLICE JURY, PETITIONERS

v.

STEWART MARSHALL

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

QUESTION PRESENTED

The United States will discuss the following question:

Whether it is proper for a federal district court to adopt and order into effect prior to compliance with the preclearance procedures of Section 5 of the Voting Rights Act of 1965 a reapportionment plan adopted by, and submitted to it on behalf of, the local legislative body of a jurisdiction covered by the Act.

STATUTE INVOLVED

Section 5 of the Voting Rights Act of 1965, 79 Stat. 439, as amended, 42 U.S.C. 1973c, and amended by Sections 204, 206, and 405, Pub. L. 94–73, 89 Stat. 402, 404–405, provides:

> SEC. 5. Whenever a State or political subdivision with respect to which the prohibitions set forth in section 4(a) based upon determinations made under the first sentence of section 4(b) are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 4(a) based upon determinations made under the second sentence of section 4(b) are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 4(a) based upon determinations made under the third sentence of section 4(b) are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1972, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose

> and will not have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2), and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice or procedure: *Provided*, That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made. Neither an affirmative indication by the Attorney General that no objection will be made, nor the Attorney General's failure to object, nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure. In the event the Attorney General affirmatively indicates that no objection will be made within the sixty-day period following receipt of a submission, the Attorney General may reserve the right to reexamine the submission if additional information comes to his attention during the remainder of the sixty-day period which would otherwise require objection in accordance with this section. Any action under this section shall be heard and

determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code and any appeal shall lie to the Supreme Court.

INTEREST OF THE UNITED STATES

This case involves an important question in the interpretation and administration of the Voting Rights Act of 1965. Among the responsibilities Congress has placed on the Attorney General under that Act is the authority to pass upon changes in election laws submitted under Section 5 by covered jurisdictions, and to institute suits to prevent implementation of such changes prior to compliance with the preclearance procedures of that provision. The dispositive question presented here, in our view, is whether those preclearance procedures should have been required in this case.

STATEMENT

East Carroll is a small, rural parish located in the northeast corner of Louisiana (Pet. App. 27, 45). In 1970 its population was 12,884—7,568 blacks, constituting approximately 59 percent of the population, and 5,316 whites, constituting about 41 percent of the population (Pet. App. 28). The voting age population of the parish was 54 percent black at that time.[1] In October 1971, blacks constituted 46 percent of the registered voters. 3,342 whites and 777 blacks were registered on the East Carroll voting rolls; in addi-

[1] General Population Characteristics, U.S. Dept. of Commerce, Bureau of the Census, Louisiana, 1970, p. 107.

tion, 2,122 blacks were listed by federal examiners as eligible to vote in the parish (Pet. App. 45).

Prior to the passage of the Voting Rights Act, blacks suffered from racially discriminatory practices in voting, which were "deeply engrained in the laws, policies and traditions of the State of Louisiana." *Louisiana* v. *United States,* 380 U.S. 145, 156. Various devices including "the grandfather clause," white primaries, "interpretation tests," and the "citizenship test" have been used to disfranchise blacks throughout Louisiana history. *Id.* at 147–151. From 1922 to 1962, *no* black resident of East Carroll Parish was permitted to register to vote (Pet. App. 45). Only after enactment of the Voting Rights Act of 1965, 42 U.S.C. 1973, *et seq.,* and other federal efforts to secure the vote for blacks in the South, were significant numbers of blacks in East Carroll parish enfranchised. This increase in black enfranchisement was partially due to the use of federal examiners who were sent to East Carroll Parish in the middle and late 1960's as a result of the determination of the Attorney General pursuant to Section 6 of the Voting Rights Act, 42 U.S.C. 1973d, that they were "necessary to enforce the guarantees of the Fifteenth Amendment." 30 Fed. Reg. 9971.

Prior to 1968, all parishes in Louisiana were divided into wards, and the members of the police jury[2]

[2] The police jury is the governing body of the parish. Its authority includes construction and repair of roads and bridges, clearing of waterways, levying taxes to defray parish expenses, appointment of executive officers, support of the poor, construction and maintenance of drainage canals, land use and transportation plan-

and school board of each parish were elected by wards.[3] Each police jury was authorized to redistrict into 5 to 12 wards, but the number of members chosen from each ward was established by law according to a population formula.[4] School boards had no independent authority to apportion, but conformed to the apportionment applicable to the corresponding police juries.[5] With the increased registration of blacks during the 1960's, two blacks were elected to the 9-member police jury and one black was elected to the 9-member school board in East Carroll Parish under the ward system, prior to 1968 (Pet. App. 46).

In July 1968, the Governor of Louisiana approved enabling legislation permitting the at-large election of police juries and school boards from throughout a parish. The legislation repealed the requirement of maintaining a ward system for the election of police juries. La. Acts 1968, No. 445, codified at La. Rev. Stat. §§ 33:1221, 33:1224 (1974). School boards were authorized to reapportion themselves every ten years by districts or at-large. La. Acts 1968, No. 561, codified at La. Rev. Stat. §§ 17:71.1–17:71.6 (1974).

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ning, providing for the public health, regulating the construction of buildings, and performing other duties respecting the public health and welfare. La. Rev. Stat. § 33:1236 (1950).

[3] The statute requiring ward elections for police juries was enacted in 1940. La. Acts 1940, Extra Sess., No. 12, § 1 (formerly codified at La. Rev. Stat. § 33:1221 (1950)). A similar provision appears to have been in effect since 1894. La. Acts 1894, No. 161, Sec. 1. School board members were elected in the same manner. La. Rev. Stat. § 17–52 (1950).

[4] These provisions were formerly codified at La. Rev. Stat. §§ 33:1222–33:1224 (1950).

[5] La. Rev. Stat. § 17–52 (1950).

Approximately one week prior to the Governor's approval of the enabling legislation, the original plaintiff—a white resident of East Carroll Parish—filed a complaint contending that the apportionment of the East Carroll Police Jury and School Board did not meet one-person, one-vote requirements and requesting the district court to order reapportionment (App. 1–22). The district court ruled that the apportionment violated the Fourteenth Amendment, enjoined the upcoming primary, and ordered the Police Jury to submit to the court a reapportionment plan for the Jury and Board by October 1, 1968 (App. 41–46).

On November 18, 1968, the Police Jury adopted a reapportionment plan providing for at-large elections, but retaining ward residency requirements for candidates. By letter of November 25, the Police Jury president transmitted that plan to the district court with the request that the court "incorporate [it] in [the court's] forthcoming judgment" (App. 56). The district court incorporated that plan in its order of December 2, 1968 (App. 50–51). The only change made by the court was to extend its application to election of members of the School Board (App. 50).

Thereafter, the Attorney General of Louisiana submitted the enabling legislation to the Attorney General of the United States for review pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c. By letters of June 26, 1969, and September 10, 1969, the Assistant Attorney General interposed objections to the State enabling legislation.[6] The Sep-

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[6] Those letters are appended to this brief as Appendix A and Appendix B, respectively.

tember 10 letter stated that a change from ward to at-large elections in parishes which have overall white voting age population majorities but which include wards having black voting age population majorities would have the effect of diluting actual or potential black voting strength.[7] As an example of that dilution, the letter cited the situation in East Carroll Parish.[8] On August 7, 1970, the Assistant Attorney General wrote to the president of the Police Jury stating that, in light of the prior objection to the enabling legislation,

> East Carroll Parish cannot now conduct at-large elections for school board or police jury members without violating federal law. [App. 59.]

Despite these objections, the 1969 and 1970 elections were held under the at-large plan.

The district court, on February 17, 1971, instructed the Police Jury and School Board to file reapportion-

[7] The letter stated, in part:

"Based upon the 1960 Census, we found that of the 64 parishes in Louisiana, only 5 have Negro majority voting age populations. Of the 59 parishes having white majority voting age populations, 39 have a combined total of 109 wards where the Negro population is in the majority. Thus, it is apparent that a change from ward to at-large voting in these parishes would have the effect of diluting the actual or potential voting power of the Negro inhabitants."

[8] With respect to East Carroll Parish the letter noted:

"[A]vailable statistics show that in that parish, the number of registered white voters exceeds the number of registered Negro voters. However, in several of the wards, including wards 1 and 3, Negro voters outnumber white voters. * * * According to our records, in 1966, a Negro candidate was elected to membership on the school board from ward 3. In 1967, two Negroes were elected to the police jury from wards 1 and 3."

ment plans revised in accordance with the 1970 census.[9] On March 11, 1971, the Jury and Board resubmitted the at-large plan to the court (App. 60–62). Respondent Marshall—a black resident of East Carroll Parish—was permitted to intervene as a party plaintiff (App. 64). His complaint, filed on May 11, 1971, challenged the validity of the at-large plan on the grounds that it violated (1) the Fourteenth and Fifteenth Amendments by diluting black voting strength, (2) the Voting Rights Act of 1965, and (3) State law[10] (App. 68). Alternative plans were submitted to the court by the Jury and Board and by Respondent Marshall (App. 70–72, 77–82, 86–89).

On July 13, 1971, the Acting Assistant Attorney General advised the district attorney for the Sixth Judicial District, which includes East Carroll Parish, that Section 5 of the Voting Rights Act of 1965 requires the submission and clearance of reapportionment plans of police juries and school boards prior to implementation of such plans (App. 84). In a letter of July 19, 1971 to the court, the district attorney expressed the view that Section 5 submission of the reapportionment plans adopted by the Jury and Board was not required because they were to be incorporated in an order of the district court (App.

[9] The court's instructions took the form of a letter to counsel for the parties, which is appended to this brief as Appendix C. The court's action appears to have been taken *sua sponte* and the letter appears to be a form letter.

[10] The complaint in intervention alleged that the at-large apportionment was "violative of state law as modified by action of the Attorney General of the United States under Section 5 of the Voting Rights Act" (App. 65).

83). On July 22, 1971, the district attorney informed the Assistant Attorney General: "After receiving your communication, I conferred with [the district court] relative to your instructions with reference to referring the plans to your Department, and he advised that *Connor* v. *Johnson* [402 U.S. 690] * * * is controlling, and that any plan incorporated in a decree issued by him would not have to be submitted to you" (App. 94). The Jury/Board plan was not submitted to the District Court for the District of Columbia or the Attorney General.

Following a hearing, the district court found that the at-large plan was constitutional, approved it (App. 179), and subsequently incorporated it in the court's decree of August 2, 1971 (App. 95–97). The district court did not rule on the applicability of Section 5 to the Jury/Board plan.

The respondent here then appealed from the district court's judgment, raising issues of unconstitutional dilution of black voting strength and violation of Section 5. While that appeal was pending, on April 14, 1972, the Assistant Attorney General withdrew the objection to the State law permitting school boards to reapportion and adopt at-large plans, on the basis of an opinion of the Attorney General of Louisiana that that law did not relieve school boards which chose to reapportion of the responsibility of complying with constitutional requirements and submitting

their plans pursuant to Section 5.[11] Although the Attorney General has never explicitly withdrawn his objection to the statute permitting at-large elections of police jurors, he has treated subsequent submissions by police juries of at-large plans as submittable under Section 5 and has objected to at least seven of them.[12] In response to a request from the Louisiana Attorney General, the Assistant Attorney General, in a letter of April 18, 1973 (appended to this brief as Appendix E), offered to reexamine the objection to the enabling legislation if a request for reconsideration was made and "if some safeguard or assurance would be provided by the State of Louisiana that the authority granted by Act 561 could not be used by local jurisdictions to circumvent the requirements of the Voting Rights Act." There was no subsequent assurance given.

On appeal, a panel of the court of appeals, with one judge dissenting, affirmed the decision of the district court (Pet. App. 27–41).[13] The panel held that Section 5's preclearance procedures were not applicable in this case because the plan here fell

[11] The letter of April 14, 1972, is appended to this brief as Appendix D.

[12] Hearings on Extension of the Voting Rights Act of 1965 before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary, 94th Cong., 1st Sess. 599 (1975).

[13] After the appeal was filed, the district court, on motion of the intervenor, withdrew its earlier order and, by order of March 27, 1972, approved a plan reapportioning the parish by wards. The court of appeals ruled that the trial court was without jurisdiction to enter its March 27 order and proceeded to consider its order of August 2 approving the at-large plan (Pet. App. 29–30).

within the exception set forth in *Connor* v. *Johnson,* 402 U.S. 690, to those requirements (Pet. App. 31–32). Additionally, the panel held that the at-large election scheme approved for East Carroll Parish did not discriminate against the black citizens of the parish (Pet. App. 33). Judge Gewin stated in dissent, however, that the effect of the 1968 change to an at-large election scheme was to submerge black voters into the then-existing majority white registration of the parish and eliminate the possibility of a "majority of black registered voters in one or more new and impartially drawn wards * * *" (Pet. App. 39).

On rehearing *en banc,* the court of appeals reversed the decision of the panel (Pet. App. 43–79). The *en banc* court did not consider the contention regarding the applicability of Section 5 (Pet. App. 48). It held that the panel and the district court erred in concluding that the at-large scheme did not unconstitutionally dilute the vote of blacks in East Carroll Parish. The court of appeals stayed its mandate, and a petition for a writ of certiorari was filed on December 3, 1973, and granted on June 30, 1975.

ARGUMENT

I. INTRODUCTION AND SUMMARY

The authority of the federal courts to correct deprivations of voting rights protected by the Fourteenth and Fifteenth Amendments is well established. *Reynolds* v. *Sims,* 377 U.S. 533; *Gomillion* v. *Lightfoot,* 364 U.S. 339. Federal court intervention was needed in the area of State and local reapportion-

ment, because other avenues were not available for the effective redress of constitutional rights. *Reynolds* v. *Sims, supra,* 377 U.S. at 570.

With respect to Fifteenth Amendment rights, Congress has provided a specific means of protection, through the administrative and judicial procedures of Section 5 of the Voting Rights Act of 1965. Section 5 is designed, in part, to prevent abridgment of voting rights by means of reapportionment. *Georgia* v. *United States,* 411 U.S. 526.

These avenues of relief are complementary, not mutually exclusive. The instant case calls upon this Court to reconcile the specific statutory requirements of Section 5 with the proper role of the district courts in reapportionment litigation.

Reapportionment plans devised in the course of litigation under the Fourteenth or Fifteenth Amendment, or both, may originate in a variety of ways,[14] although there are three main categories: (1) a plan formulated by the State or political subdivision on its

[14] The following is a list of categories of reapportionment plans devised in the course of litigation:

1. Jurisdiction (State or political subdivision) formulates new plan on its own initiative and prior to ruling by district court that present apportionment is unconstitutional; or

2. District court rules present apportionment unconstitutional, and

(a) Jurisdiction enacts or formally adopts plan (i) without court order, or (ii) pursuant to court order to formulate plan, and (i) presents to court, or (ii) does not present to court; or

(b) Jurisdiction formulates plan and presents to court (i) without court order, or (ii) pursuant to court order to formulate plan; or

(c) Plaintiff formulates plan and presents to court (i) without court order, or (ii) pursuant to court order to formulate plan; or

own initiative, (2) a plan formulated by the State or political subdivision in response to a court order, and (3) a plan formulated by the court itself. This Court has disposed of the issue of Section 5 applicability to categories (1) and (3) by its decisions in *Connor* v. *Waller*, 421 U.S. 656, and *Connor* v. *Johnson*, 402 U.S. 690, respectively. While there has been concern that administrative problems would be created by requiring the Section 5 submission of plans formulated as a result of court order, we believe that under this Court's decision in *Connor* v. *Waller, supra,* those problems can be minimized. Unlike plans formulated by the court itself, which this Court exempted from Section 5 review in *Connor* v. *Johnson, supra,* Section 5 submission of plans formulated by covered jurisdictions does not unduly interfere with the prerogatives of the court.

The policies underlying *Connor* v. *Johnson* and *Connor* v. *Waller* provide guidance here. A full examination of the relevant considerations leads to the conclusion that Section 5 clearance is required for any plan submitted by a covered jurisdiction in reapportionment litigation, whether it has first been formally enacted or is simply proposed by the jurisdiction through counsel for adoption by the reapportionment court. A proposed plan is literally as much within Section 5 as an enacted plan, because it is a

(d) Special master formulates plan pursuant to court order; or
(e) Court formulates its own plan.

This list is intended to be illustrative, not all-inclusive. As will be discussed more fully below, we believe that for purposes of Section 5 there is essentially no difference between categories 2(a) and 2(b).

change in voting criteria which the jurisdiction "seek[s] to administer" by proposing its incorporation in the court's decree. Only plans formulated by the reapportionment court itself, or by the complainants, remain outside of Section 5, although the court may receive comments from the jurisdiction's counsel on the court's or plaintiffs' proposals. When necessary, the reapportionment court can stay its proceeding pending Section 5 clearance or grant appropriate interim relief. This approach will encourage jurisdictions to develop plans which will pass muster under Section 5, and potential problems of judicial administration can be resolved by procedures normally applied under the doctrine of primary jurisdiction.

II. THE COURTS BELOW ERRED IN CONSIDERING THE REAPPORTIONMENT PLAN OF THE EAST CARROLL PARISH POLICE JURY AND SCHOOL BOARD PRIOR TO ITS SUBMISSION AND CLEARANCE PURSUANT TO SECTION 5 OF THE VOTING RIGHTS ACT OF 1965.

A. Section 5 Affords Special Protection for Fifteenth Amendment Rights.

Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, provides that before implementation of any voting practice different from that in effect on November 1, 1964, which a covered jurisdiction enacts or seeks to administer, the change must be submitted for review to the District Court for the District of Columbia [15] or the Attorney

[15] Congress restricted Section 5 review to a single district court—the District Court for the District of Columbia—in order to assure uniformity of decisions. Hearings on S. 1564 before the

General. In enacting Section 5, Congress intended to offer special protection against racial discrimination in voting. Recognizing that private suits brought to enforce Fifteenth Amendment rights offered an inadequate means of protecting those rights, Section 5 was adopted to provide a more effective procedure for affording such protection. *Allen* v. *State Board of Elections,* 393 U.S. 544, 556; H.R. Rep. No. 91–397, 91st Cong., 1st Sess. 8 (1970); S. Rep. No. 94–295, 94th Cong., 1st Sess. 15 (1975).

The special protection of Section 5 is accomplished by placing on covered jurisdictions the burden of proving that new voting laws do not have the "purpose and will not have the effect of denying or abridging the right to vote on account of race or color." See *Perkins* v. *Matthews,* 400 U.S. 379, 396. Unlike the normal situation in an action brought by an individual to enforce his Fifteenth Amendment rights, the burden of proof in a Section 5 proceeding is on the covered jurisdiction. Moreover, the jurisdiction must prove the absence of discriminatory purpose *and* effect. See *Harper* v. *Levi,* 520 F. 2d 53, 71 (C.A. D.C.). This special protection is afforded only by review pursuant to Section 5.[16]

Senate Committee on the Judiciary, 89th Cong., 1st Sess., Part 1, pp. 69–73 (1965). No other district court is authorized to determine whether a voting change complies with Section 5. *Perkins* v. *Matthews*, 400 U.S. 379, 383–387.

[16] But see *Sims* v. *Amos*, 365 F. Supp. 215, 220 (M.D. Ala.), affirmed sub nom. *Wallace* v. *Sims*, 415 U.S. 902. In *Sims*, the district court ruled, citing *Connor* v. *Johnson*, 402 U.S. 690, that a

The decision of a panel of the court of appeals, in the present case, approved the district court's order despite the absence of Section 5 clearance. The court ruled that plans such as that under review "resulting from [the district court's] equitable jurisdiction over adversary proceedings are not controlled by Section 5" (Pet. App. 31). In reversing the panel decision, the *en banc* court of appeals stated "we need not consider" the applicability of Section 5 to the Jury/Board plan (Pet. App. 48), although in a footnote to that statement the court stated that "the panel's decision that *Connor* * * * govern[s] is quite appropri-

reapportionment plan devised by the Alabama State legislature, and submitted for approval in the course of an on-going reapportionment suit, did not have to be submitted pursuant to Section 5. The district court nevertheless held that the State retained (and in that case failed to meet) the burden of proving to the district court that its plan was non-discriminatory. On appeal to this Court the State officials contended that the district court had erred in imposing the burden of proof upon them. They did not, however, challenge the ruling that Section 5 was inapplicable. Thus, this Court's affirmance of the district court's decision is not a holding that a State plan submitted to a court is exempt from Section 5. Moreover, the district court in *Sims* did not have the benefit of this Court's subsequent decision in *Connor* v. *Waller*, 421 U.S. 656, discussed *infra*, pp. 22–24.

Because Section 5 represents an expression of congressional intent to impose the burden of justifying voting changes on jurisdictions with a long history of racial discrimination in the electoral process, the district court in *Sims* apparently believed that, when a reapportionment plan is proposed by a covered jurisdiction, that burden should be on the jurisdiction even if the plan is being reviewed by a local district court. We submit, however, that it is more appropriate, where feasible, to secure that protection by subjecting the plan to Section 5 procedures, which are the means chosen by Congress to achieve that end.

ate." *Id.* at 48, n. 9. In light of the considerations we shall now discuss and of this Court's recent decision in *Connor* v. *Waller, supra,* we believe that the panel's opinion reflects an incorrect interpretation of the requirements of Section 5.

B. Congress Intended Section 5 to Apply to All Changes in Voting Laws

Section 5 expresses the intent of Congress to provide a method of passing upon all changes in voting laws of covered jurisdictions. *Perkins* v. *Matthews, supra,* 400 U.S. at 396; S. Rep. No. 94–295, 94th Cong., 1st Sess. 15 (1975). There are no statutory exceptions to that rule. Congress intended that there be no exceptions, see *Allen* v. *State Board of Elections, supra,* 393 U.S. at 568, except, as shown *infra,* for the narrow exception encompassed by this Court's decision in *Connor* v. *Johnson, supra.*

Reapportionment plans are one of the principal means by which covered jurisdictions have sought to abridge the Fifteenth Amendment rights of black people. Approximately one-third of all Section 5 objections interposed by the Attorney General have been to redistrictings at the State, county, and city levels. S. Rep. No. 94–295, 94th Cong., 1st Sess. 18 (1975). When Congress extended the Voting Rights Act in 1970, it was fully informed of this Court's decision in *Allen* v. *State Board of Elections, supra,* which "implicitly recognized the applicability of § 5 to * * * changes arising from the reapportionment of state legislatures." *Georgia* v. *United States,* 411 U.S. 526,

533. Yet it chose not to exempt such plans from the coverage of Section 5. *Ibid.* In extending the Voting Rights Act again in 1975, Congress confirmed its intent to cover reapportionment plans. Both congressional committees which considered the extension expressed concern that redistricting to achieve compliance with one-person, one-vote standards would create an opportunity for covered jurisdictions to disenfranchise minorities. And Section 5 has, accordingly, been extended beyond 1980 to guarantee federal protection while redistrictings which result from the 1980 Census are taking place. S. Rep. No. 94–295, 94th Cong., 1st Sess. 18 (1975); H.R. Rep. No. 94–196, 94th Cong., 1st Sess. 10–11 (1975).

The legislative history of the 1975 extension specifically expresses the intent of Congress that Section 5 apply to reapportionment plans adopted in the course of litigation. The report of the Senate Committee which considered the extension stated that Section 5 is intended to establish

> a form of primary jurisdiction for Section 5 review under which courts dealing with voting discrimination issues should defer in the first instance to the Attorney General or to the District of Columbia District Court. [S. Rep. No. 94–295, 94th Cong., 1st Sess. 18 (1975).]

Where a district court, in the course of litigation respecting the reapportionment of a governmental entity directs that entity "to adopt a new plan and present it to the court for consideration * * * the court should

defer its consideration of * * * [that plan] * * * until such time as [it has] been submitted for Section 5 review." S. Rep. No. 94–295, *supra,* at 18–19.[17]

Thus, since the Police Jury and School Board of East Carroll Parish formulated a reapportionment plan for election of members of each body, adopted that plan, and sought to administer it, that plan was governed by Section 5[18] and should not have been implemented without the prior clearance required by that section.

C. The Exception to Section 5 Encompassed by Connor v. Johnson *Does Not Apply to This Case*

If the Jury/Board plan had been implemented without court order, that action would have been illegal for failure to comply with Section 5 procedures. The question is whether, because the plan

[17] While the Senate committee expressed its intent that Section 5 apply to a reapportionment plan such as the one here under review, it did not consider it necessary to change the language of Section 5 in order to accomplish that result. This Court has stated that "subsequent legislation declaring the intent of an earlier statute is entitled to significant weight" in statutory construction. *National Labor Relations Board* v. *Bell Aerospace Co.*, 416 U.S. 267, 275; *Red Lion Broadcasting Co.* v. *Federal Communications Commission*, 395 U.S. 367, 380–381. Such consideration is especially appropriate where as here the congressional intent is expressed in legislation extending, without change, the earlier statutory provision, which was reenacted only five years earlier.

[18] East Carroll Parish is a covered jurisdiction within the meaning of Section 4(a) of the Act, 42 U.S.C. 1973b(a), to which the provisions of Section 5 apply. 30 Fed. Reg. 9897. And a reapportionment plan is, of course, covered by Section 5. *Georgia* v. *United States*, 411 U.S. 526. The current plan differs from the apportionment which governed the Jury and Board in 1964. See Statement pp. 5, 7, *supra.*

was submitted to a local district court in the course of a reapportionment case, that plan was brought within the one narrow exception which this Court has carved from the applicability of Section 5. We believe that exception does not apply.

In *Connor* v. *Johnson,* 402 U.S. 690, 691, this Court ruled that "[a] decree of the United States District Court is not within reach of Section 5 of the Voting Rights Act." The question before the Court in *Johnson* was whether a reapportionment plan *formulated* and ordered into effect in an on-going reapportionment suit by a local district court was subject to Section 5 review. There, the State of Mississippi had enacted a plan which did not comply with one-person, one-vote standards, and the district court found it necessary to formulate its own interim plan to govern the upcoming elections. *Connor* v. *Johnson,* 330 F. Supp. 506 (S.D. Miss.). The "standard, practice, or procedure with respect to voting" originated with the court itself and was embodied in the court's decree. At no time was the court-formulated reapportionment plan which this Court reviewed in *Johnson* subject to Section 5, because the covered jurisdiction did not "enact or seek to administer" it within the plain meaning of the statute. The district court's plan could not have been subjected to Section 5 procedures without subjecting its decree to review by the District Court for the District of Columbia, which has no appellate jurisdiction, or by the Attorney General, which would be inappropriate.

Section 5 was directed at "States [which] had resorted to the extraordinary stratagem of contriving new rules of various kinds for the sole purpose of perpetuating voting discrimination in the face of adverse federal court decrees," *South Carolina* v. *Katzenbach,* 383 U.S. 301, 335; it was not directed at federal court decrees. Therefore, in order to preserve the integrity of the courts' orders from review by another district court or by an executive agency, this Court interpreted Section 5 to exempt court-formulated plans from its ambit. 402 U.S. at 695 (Black, J., dissenting).[19]

Connor v. *Johnson* did not mean, however, that covered jurisdictions could escape from the requirements of preclearance imposed by Section 5 simply because their voting procedures were challenged in an on-going reapportionment suit. This was made clear by the Court's decision in a later phase of the same litigation, *Connor* v. *Waller,* 421 U.S. 656.

After further proceedings,[20] the Mississippi legislature enacted a reapportionment plan in 1973 which was again challenged as unconstitutional. While this challenge was pending, the State legislature adopted a

[19] Congress has since endorsed this exemption: "The one exception where Section 5 review would not ordinarily be available is where the court, because of exigent circumstances, actually fashions the plan itself instead of relying on a plan presented by a litigant. This is the limited meaning of the 'court decree' exception recognized in *Connor* v. *Johnson*, 402 U.S. 690 (1971)." S. Rep. No. 94-295, 94th Cong., 1st Sess. 19 (1975).

[20] See *Connor* v. *Johnson*, 330 F. Supp. 521 (S.D. Miss.); *Connor* v. *Williams*, 404 U.S. 549.

completely new reapportionment plan in April 1975. The reapportionment court then directed the plaintiffs to file a new amended complaint addressing the 1975 reapportionment acts. In expedited proceedings, the court held that, with the exception of one county, the new plan the State had adopted satisfied the Fourteenth and Fifteenth Amendments. *Connor* v. *Waller,* 396 F. Supp. 1308 (S.D. Miss.).

On direct appeal this Court reversed *per curiam*. *Connor* v. *Waller,* 421 U.S. 656. It held that the State's reapportionment Acts, as submitted to the reapportionment court in the course of the litigation, which had been in progress since 1965 (396 F. Supp. at 1309), must be cleared under Section 5 in order to be effective as laws, and that the reapportionment court should not have considered the racial discrimination claims prior to clearance. It stated (421 U.S. at 656):

> Those Acts are not now and will not be effective as laws until and unless cleared pursuant to § 5. The District Court accordingly also erred in deciding the constitutional challenges to the Acts based upon claims of racial discrimination.

Thus, a district court having jurisdiction of reapportionment litigation involving a covered jurisdiction may not dispose of a claim that a new reapportionment plan enacted by that jurisdiction "den[ies] or abridg[es] the right to vote on account of race or color"[21] if that plan has not been cleared under

[21] Section 5, 42 U.S.C. 1973c. In addition, Section 5 now includes the guarantees of Section 4(f)(2), as added, 89 Stat. 401, barring covered jurisdictions from denying or abridging the right of language minorities to vote. 89 Stat. 402.

Section 5. Since Section 5 requires the jurisdiction to obtain clearance prior to approval by the reapportionment court, no decree incorporating or endorsing the jurisdiction's enactment would be subject to Section 5 review under *Connor* v. *Waller*. That decision is thus consistent with the rule of *Connor* v. *Johnson* that court decrees are not subject to Section 5.

It is clear under *Connor* v. *Waller* that if the plans involved in the present case were enacted by the Police Jury and the School Board prior to submission to the district court, they "are not now and will not be effective as laws until and unless cleared pursuant to § 5" (421 U.S. at 656). Assuming for argument that neither plan was formally enacted prior to its submission to the district court,[22] and recognizing that they were submitted as a proposal to the district court in response to the court's request (see Statement, *supra,* pp. 8–9), we submit that Section 5 clearance is nevertheless required before the district court could approve them.

Section 5 by its terms applies when covered jurisdictions either "enact" voting criteria—the situation in *Connor* v. *Waller*—or "seek to administer" such criteria. Submission by a covered jurisdiction of a

[22] The Police Jury plan was, however, adopted in 1968 and submitted for court approval without Section 5 clearance. The School Board plan was the result of the district court's 1968 order approving the Police Jury plan and extending its at-large aspects to the Board. See Statement, *supra*, p. 7. The plans were resubmitted in 1971 pursuant to resolution of each body, in response to the court's request. See App. 60–62.

plan for proposed adoption by a reapportionment court is a means by which the jurisdiction "seek[s] to administer" that plan. It makes no difference under the language of Section 5, therefore, whether the jurisdiction has formally enacted its plan; has informally authorized its counsel to submit it to the reapportionment court, subject to subsequent enactment if approved; or proposes through counsel that it be effectuated without enactment by incorporation into the court's decree. Unless the jurisdiction's plan has been cleared under Section 5, it is a nullity which can neither take effect by its own force nor be entertained by a reapportionment court for proposed incorporation in its decree. This was Congress' express understanding and intent when it recently reenacted Section 5. S. Rep. No. 94–295, 94th Cong., 1st Sess. 19 (1975), quoted n. 19, *supra,* p. 22.

Where an apportionment plan is challenged and struck down in the course of litigation, the district court should, if possible, give the jurisdiction an opportunity to exercise its legislative responsibility to formulate a plan which meets constitutional standards.[23] If, however, the jurisdiction is unable or unwilling to produce a plan and obtain clearance under

[23] "[L]egislative reapportionment is primarily a matter for legislative consideration and determination, and * * * judicial relief becomes appropriate only when a legislature fails to reapportion according to federal constitutional requisites in a timely fashion after having had an adequate opportunity to do so." *Reynolds* v. *Sims*, 377 U.S. 533, 586; *Connor* v. *Williams*, 404 U.S. 549, 552, n. 4; *Chapman* v. *Meier*, 420 U.S. 1, 27.

Section 5, the district court may formulate a plan of its own or adopt a plan proposed by the plaintiff.[24] Of course, plans proposed by the plaintiff in reapportionment litigation, or formulated by the court itself because the jurisdiction is unable or unwilling to adopt an acceptable plan of its own (*Connor* v. *Johnson, supra*), remain outside of Section 5. Nor should the reapportionment court be prevented from receiving comments from the jurisdiction as to tentative plans formulated by the court or proposed by the plaintiff, or from having the assistance of any technical information or expertise which the jurisdiction may be able to offer. In sum, the jurisdiction retains its full procedural rights as a litigant. But, as a substantive matter, Section 5 bars it from adopting or proposing a plan without first obtaining clearance thereunder.

If such clearance is sought and obtained from the Attorney General, the reapportionment court may consider the Attorney General's lack of objection along with other factors bearing on the constitutionality of the plan. If the Attorney General objects, or if the jurisdiction prefers not to submit the plan to the Department of Justice, then the District Court for the District of Columbia must find, in a suit by the jurisdiction against the Attorney General, that it has carried its burden of showing that its proposed plan does

[24] We recognize the possibility of collusive suits by plaintiffs in fact acting at the behest of the jurisdiction. We assume, however, that the district courts will be alert to guard against any abuse of their process. A plan in fact proposed by the jurisdiction but presented collusively through the plaintiff would be subject to Section 5.

not abridge voting rights on account of race, color or language.[25] Only then may constitutional challenges based on racial or language discrimination be decided by the reapportionment court.

Such an approach, we submit, is consistent with the limited role courts should play in reapportionment, advances the purposes of Section 5, and reconciles the primary jurisdiction created by Section 5 with the responsibilities of reapportionment courts. First, it would encourage covered jurisdictions to take the initiative in developing plans which will pass muster under Section 5 and under the one-person/one-vote standard of the Fourteenth Amendment. See *Reynolds* v. *Sims*, 377 U.S. 533, 586; *Connor* v. *Williams*, 404 U.S. 549, 552, n. 4; *Chapman* v. *Meier*, 420 U.S. 1, 27. If jurisdictions are not permitted to propose plans to the district courts without Section 5 clearance, they will not be tempted to seek advisory opinions from reapportionment courts with respect to the racial aspects of reapportionment. In addition, because jurisdictions which do not formulate plans for submission under Section 5 would be foreclosed from proposing their own plan to the reapportionment

[25] If the District of Columbia court finds the plan to have a racially discriminatory purpose or effect, then not only does Section 5 prevent the reapportionment court from approving the plan, but the jurisdiction is estopped from relitigating the matter in that court. *Blonder-Tongue Labs.* v. *University Foundation*, 402 U.S. 313. If that court sustains the plan, the plaintiff may continue to assert his claims of racial discrimination in the reapportionment court unless he was a party in the District of Columbia proceeding. *Ibid.*

court, and would be limited to commenting on court-proposed or plaintiff-proposed plans, they would find it seriously disadvantageous to fail to initiate their own plans for Section 5 clearance. Few political jurisdictions would be likely to surrender the right to propose their own reapportionment plan in order to evade the requirements of Section 5.

Indeed, it would be anomalous to impose the special protections of Section 5 on those jurisdictions which, on their own initiative, adopt reapportionment plans in an effort to meet constitutional standards, while exempting those which reapportion only in response to constitutional challenges. Such an interpretation of Section 5 might have the untoward consequence of encouraging covered jurisdictions to be derelict in reapportioning or correcting Fourteenth or Fifteenth Amendment violations in their apportionment plans. If a covered jurisdiction were confronted with the choice of either acting to adopt a plan which corrects constitutional infirmities, subject to Section 5's special burden of proof, or not acting until ordered to do so by a court in the context of a privately-initiated lawsuit, thus permitting the covered jurisdiction to avoid the responsibility of Section 5 submission, the jurisdiction might well choose the latter course. Then the special protection which Congress intended to apply to all changes in voting laws formulated by covered jurisdictions—which they either "enact" or otherwise "seek to administer"—would be lost.

Finally, claims that problems of judicial administration require the exclusion from Section 5 review of reapportionment plans formulated by covered jurisdictions for submission in on-going reapportionment litigation do not, in our view, establish a basis for limiting *Connor* v. *Waller, supra.* Such problems conceivably could arise because reapportionment litigation may involve claims under both the Fourteenth and Fifteenth Amendments. As we have explained (*supra,* pp. 24–26), *Connor* v. *Waller* in our view bars the district courts from approving for implementation proposed plans submitted to them by covered jurisdictions without prior clearance under Section 5 procedures; but it did not disturb the district courts' powers to act upon Fourteenth Amendment complaints, *i.e.,* complaints of existing non-compliance with one-person, one-vote standards. As this Court specified in *Connor* v. *Waller,* 421 U.S. 656–657, the reapportionment court retains the authority to require, in appropriate circumstances, that a forthcoming election be conducted "pursuant to a court-ordered reapportionment plan that complies with this Court's decisions * * *." But see n. 19, *supra,* p. 22. But the local district court is to stay consideration of all constitutional issues concerning the covered jurisdiction's own proposed plan pending Section 5 clearance, much as judicial or administrative proceedings are stayed pending proceedings on particular issues in another tribunal with primary jurisdiction. See, *e.g., California* v. *Federal Power Commission,* 369 U.S. 482, 490

(administrative action should have been stayed pending judicial proceeding); *Ricci* v. *Chicago Mercantile Exchange,* 409 U.S. 289; *Carnation Co.* v. *Pacific Westbound Conference,* 383 U.S. 213, 222–224 (judicial proceedings stayed pending administrative action).

Indeed, the Voting Rights Act itself, and especially its extensions (see n. 17, *supra,* p. 20), represent a balancing by Congress of possible administrative difficulties against the need for adherence to the procedures of Section 5. A requirement that reapportionment courts not pass on proposals of covered jurisdictions until they obtain Section 5 clearance comports with the legislative intent.[26]

[26] Prior to this Court's decision in *Conner* v. *Waller*, *supra*, the Attorney General had taken the position that when a reapportionment plan was being litigated with respect to a Fifteenth Amendment claim he would defer to the judicial determination regarding racial discrimination. See *Georgia* v. *United States*, 411 U.S. 526, 534–535 n. 6. In light of *Connor* v. *Waller*, however, that policy is inappropriate. A recent decision of the United States Court of Appeals for the District of Columbia Circuit has invalidated the Attorney General's prior policy of deferral. *Harper* v. *Levi*, 520 F. 2d 53 (C.A. D.C.). Our pre-*Waller* policy had proved somewhat impractical. For example, in the instant case, the 1968 litigation involved no Fifteenth Amendment claim; there was no pending Fifteenth Amendment claim when the at-large scheme was refiled with the court in 1971 pursuant to the court's request; it would be anomalous if the subsequent filing of the complaint in intervention seeking to enforce the Voting Rights Act and the Fifteenth Amendment were to be treated as divesting the Attorney General and the District Court for the District of Columbia of Section 5 authority or responsibility.

CONCLUSION

Read in light of the clear language of the statute, its legislative history, and the policy underlying its enactment, Section 5 is applicable to this case. The district court therefore erred in ordering into effect the Jury/Board plan without awaiting its prior clearance pursuant to Section 5.[27] In these circumstances, the Court need not consider whether the plan is invalid under the Fifteenth Amendment on the ground that it dilutes black voting strength in East Carroll Parish. Rather, the judgment should be vacated and the case should be remanded with instructions to stay further proceedings (except for the possibility of interim relief) pending Section 5 clearance.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.
J. STANLEY POTTINGER,
Assistant Attorney General.
BRIAN K. LANDSBERG,
JOHN C. HOYLE,
JESSICA DUNSAY SILVER,
Attorneys.

JANUARY 1976.

[27] Indeed, if, contrary to our contention, the plan in this case were to be regarded as a court-ordered plan not subject to Section 5, then it apparently fails to comply with the preference for single-member districts over multi-member districts which this Court has repeatedly required of court-ordered reapportionments. See *Chapman* v. *Meier*, 420 U.S. 1, 17–19, and cases there cited.

APPENDIX A

JUNE 26, 1969.

Hon. JACK P. F. GREMILLION,
Attorney General of Louisiana,
State Capitol Building,
Baton Rouge, La.

DEAR MR. ATTORNEY GENERAL: This is in reference to Act 445 and Act 561 enacted by the Louisiana State Legislature at the 1968 Regular Session, copies of which were submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965.

We have carefully examined and considered this material. These amendments place in the hands of existing police juries and school boards broad discretion in redrawing the boundaries of police jury wards and establishing special school board election districts, and in determining the manner of electing members to their particular bodies. On the basis of the information before me, I have concluded that the new procedures that both amendments provide for have had and, if widely implemented, will have the effect of discriminating against Negro voters on account of their race, and of denying to them an effective voice in the selection of police jury and school board members. In the absence of information showing the contrary, I must, on behalf of the Attorney General, interpose objections to the implementation of Act 445 and Act 561.

Should you wish to present justification for the changes in election procedures provided for by the

amendments, or propose procedures which will insure against racially discriminatory effects in their implementation, the Attorney General will gladly reconsider his position. Of course, as provided for by Section 5 of the Voting Rights Act, you have the alternative of instituting an action in the United States District Court for the District of Columbia for a declaratory judgment that such changes in election and voting procedures do not have the purpose and will not have the effect of denying and abridging the right to vote on account of race or color.

Sincerely,

JERRIS LEONARD,
Assistant Attorney General,
Civil Rights Division.

APPENDIX B

SEPTEMBER 10, 1969.

Hon. JACK P. F. GREMILLION,
Attorney General of Louisiana,
State Capitol Building,
Baton Rouge, La.

DEAR MR. ATTORNEY GENERAL: This is in reply to your letter of July 1, 1969, in which you requested that we delineate our specific objections to the implementation of Acts 445 and 561 of the 1968 Regular Session of the Louisiana Legislature.

Our examination of this legislation discloses that Act 445 removes the previous requirement for the creation of a minimum number of police jury wards within a parish, thus permitting a police jury to redistrict a parish into one parish-wide ward. Therefore, we construe this Act as permitting a change from ward to at-large voting in police jury elections. Act 561 specifically provides for a change to at-large voting for school board members.

In the case of *Fairley* v. *Patterson,* 393 U.S. 544 (1969) involving a change from district to at-large voting for county supervisors in Mississippi, the Supreme Court held that such a change constitutes a "voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting" within the meaning of Section 5 of the Voting Rights Act of 1965. In its opinion, the Court stated as follows:

> The right to vote can be affected by a dilution of voting power as well as by an absolute pro-

> hibition on casting a ballot. * * * Voters who are members of a racial minority might well be in the majority in one district, but in a decided minority in the county as a whole. This type of change could therefore nullify their ability to elect the candidate of their choice just as would prohibiting some of them from voting.

Based upon the 1960 Census, we found that of the 64 parishes in Louisiana, only 5 have Negro majority voting age populations. Of the 59 parishes having white majority voting age populations, 34 have a combined total of 109 wards where the Negro population is in the majority. Thus, it is apparent that a change from ward to at-large voting in these parishes would have the effect of diluting the actual or potential voting power of the Negro inhabitants.

An example of such dilution has taken place in East Carroll Parish. Our available statistics show that in that parish, the number of registered white voters exceeds the number of registered Negro voters. However, in several of the wards, including wards 1 and 3, Negro voters out-number white voters. Prior to a recent reapportionment suit (*Zimmer* v. *McKeithen*, Civil Action No. 13927, W. D., La., December 2, 1968), all police jury and school board members were elected by the voters of their respective wards. According to our records, in 1966, a Negro candidate was elected to membership on the school board from ward 3. In 1967, two Negroes were elected to the police jury from wards 1 and 3.

On November 18, 1968, the East Carroll Parish Police Jury, in special session, adopted a resolution which provided that all new police jurors be elected at-large throughout the parish. This resolution was incorporated in the reapportionment order and ex-

tended thereby to include all new school board members. Since this decision, two Negro candidates for school board offices, one from ward 1 and the other from ward 3, have been defeated in at-large elections.

We further note that under the provisions of Act 561, any concentration of Negro voting power would be subject to dilution by the creation of special school board election districts, the boundaries of which need have no relation to existing or future ward boundaries.

Since neither of the Acts contain any safeguards against abuses, and in view of the opportunities afforded by the Acts to discriminate against Negro voters, we must reaffirm our objections to their implementation. However, we reiterate that should you wish to present justification for the changes or propose procedures which will insure against racially discriminatory effects in their implementation, the Attorney General will gladly reconsider his position.

Sincerely,

JERRIS LEONARD,
Assistant Attorney General,
Civil Rights Division.

APPENDIX C

[Text of Letter dated February 17, 1971 to counsel for parties—T. L. Clarke, W. B. Ragland, and McIntosh, Hesten & Gilfoil]

GENTLEMEN: It is my understanding that the final census figures for the respective wards in each Parish now have been issued by the Bureau of Census and are obtainable.

Accordingly, each Police Jury and School Board should submit a plan for reapportionment within thirty days from this date, based upon such figures, accompanied by supporting briefs; and attorneys for plaintiffs will be allowed fifteen days thereafter within which to file objections, if any, to the proposed plans, accompanied by supporting briefs.

Please act accordingly.

BEN C. DAWKINS, JR.,
Chief Judge, United States
District Court for the
Western District of Louisiana.

APPENDIX D

DEPARTMENT OF JUSTICE,
ASSISTANT ATTORNEY GENERAL,
Washington, D.C., 20530.
APRIL 14, 1972.

Mr. JOHN F. WARD, Jr.,
Burton, Roberts & Ward,
Attorneys at Law,
206 Louisiana Avenue,
Baton Rouge, La.

DEAR MR. WARD: This is in reply to your letter of February 22, 1972, in which you request that the Attorney General withdraw his objection, interposed pursuant to the Voting Rights Act of 1965, to Act 561 of the 1968 Louisiana Legislature, as amended.

We have reviewed and reanalyzed the matter in light of the opinion of the Attorney General of Louisiana which you forwarded with your request. As I read that opinion, it interprets Act 561, as amended, to incorporate the requirement that local boards, in reapportioning themselves, must comply with Supreme Court decisions regarding reapportionment and non-discrimination in the elective process and that such reapportionment plans must be submitted pursuant to Section 5 of the Voting Rights Act prior to implementation. Based upon this interpretation of the Act, the Attorney General will withdraw his objection provided the interpretation of the State Attorney is disseminated to all school boards in the state. Therefore, I would appreciate your advising me as soon as

this has been done and of the manner in which the communication was made.

Sincerely,

DAVID L. NORMAN,
Assistant Attorney General,
Civil Rights Division.

APPENDIX E

APRIL 18, 1973.

HON. WILLIAM J. GUSTE, JR.
Attorney General,
State of Louisiana,
Department of Justice,
Post Office Box 44005,
Baton Rouge, La.

Attention: Kenneth C. DeJean, Chief, Civil Division).

DEAR MR. ATTORNEY GENERAL: This is to acknowledge receipt of your letter dated March 14, 1973 by this Department on March 26, 1973.

Members of my staff are presently making a preliminary analysis of the 149 acts specified in your letter to determine, for each of the acts, whether the information we presently have is sufficient to enable us to properly evaluate the act under Section 5 or, alternatively, whether the information we have is insufficient to allow such an evaluation of the act, in which case it will be necessary for us to request additional information relevant to the act as provided by the procedural guidelines for the administration of Section 5, 28 C.F.R. § 51.18, a copy of which is enclosed.

We note that on page 2 of your March 14 letter you request that we treat as submitted under Section 5, and accordingly consider, any acts to which Section 5 applies which we may discover in the volumes you forwarded to us, in addition to those acts enumerated in your letter. We believe that submission of enactments under Section 5 may not be perfected unless the legislation in question is specifically identified and

particularly submitted for Section 5 review. See *Allen* v. *State Board of Elections* 393 U.S. 544, 571; *Clayton* v. *North Carolina State Board of Elections* 317 F. Supp. 915, 919 (E.D. N.C. 1970). We may not, therefore, unilaterally consider and evaluate pursuant to Section 5 legislation which may be contained in the volumes of state enactments but which are not individually designated in your letter of submission. We will, however, notify you of any such enactments we may discover, and, afford you the opportunity to submit the acts for review by the Attorney General or to initiate a suit for declaratory judgment in the United States District Court for the District of Columbia, as provided by Section 5.

In addition, you request in your letter of March 14 that we reconsider our objection to "Act 445 of 1969". Your letter dated March 21 seeks reconsideration of "Act 445 of 1970". It may be that you have reference to Act 445 enacted by the Louisiana legislature at the 1968 regular session, and to which the Attorney General objected on June 26, 1969.

The procedure for requesting reconsideration is set out in the Section 5 guidelines, 28 C.F.R. §51.23. Should you wish to present information not previously available to you regarding Act 445, as addressed in the guidelines, we will be pleased to entertain your request. We note, however, that Attorney General Gremillion corresponded with us regarding our objection of June 26, 1969 in his letter of July 1, 1969; we responded in our letter dated September 10, 1969. In this connection, we also received a letter dated January 21, 1971, from Mr. John F. Ward, Jr., which indicates that a carbon copy was sent to Attorney General Gremillion, offering an explanation of the

facts surrounding the enactment of Act 445, the effect in Louisiana of our objection, and arguments to support a withdrawal of the objection.

As you may know, on April 14, 1972 the Attorney General withdrew his objection to Act 561, a companion bill to Act 445 involving school districts in Louisiana, also enacted in the 1968 Regular Session of the Louisiana Legislature. Prior to our letter of April 14, 1972, we had suggested that Act 561 would not continue to be objectionable if some safeguard or assurance would be provided by the State of Louisiana that the authority granted by Act 561 could not be used by local jurisdictions to circumvent the requirements of the Voting Rights Act. Such a safeguard was provided in a letter dated February 21, 1972 from Attorney General Gremillion to Mr. Ward. A copy of that letter, and of our letter of April 14, 1972, is enclosed. Should you take similar action concerning Act 445 we will, upon our receipt of such information, re-examine our position with regard to Act 445 in light of your action.

If we can assist you in gathering information necessary to make your submission complete or if you wish to discuss the matter, please do not hesitate to call on me or my staff. Robert R. Rush, the attorney assigned to this matter, can be reached by calling 202–739–3882.

Sincerely,

J. STANLEY POTTINGER,
Assistant Attorney General,
Civil Rights Division.

U.S. GOVERNMENT PRINTING OFFICE: 1976

MOTION FILED

OCT 16 1975

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

No. 73-861

EAST CARROLL PARISH SCHOOL BOARD AND
EAST CARROLL PARISH POLICE JURY,

Petitioners,

v.

STEWART MARSHALL,

Respondent.

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* AND BRIEF *AMICUS CURIAE* OF THE LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW

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October 16, 1975

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FOR THE FIFTH CIRCUIT

MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE*

The Lawyers' Committee for Civil Rights Under Law moves, pursuant to Rule 42 of the Rules of this Court, for leave to file the annexed brief *amicus curiae* in order to present to the Court a fundamental statutory issue which the courts below and the litigants have not treated as central but which the *amicus* believes is dispositive of this case without reaching the constitutional issues. This case has traveled here principally on the issue whether the at-large elections adopted in East Carroll Parish in 1968 and retained in 1971 dilute the votes of black citizens in

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ON WRIT OF CERTIORARI TO
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BRIEF *AMICUS CURIAE* OF THE LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW

INTEREST OF THE *AMICUS CURIAE*

The Lawyers' Committee for Civil Rights Under Law is a non-profit organization which was created in 1963 at the request of Presndent John F. Kennedy to involve private lawyers throughout the nation in the struggle to assure equal civil rights for all Americans. The Committee's membership includes several former Attorneys General and Assistant Attorneys General for Civil Rights,

violation of the fourteenth and fifteenth amendments to the Constitution, but the *amicus* believes it was error for the courts below even to consider this question in view of the fact that the apportionment plans adopted beginning in 1968 have never been cleared under section 5 of the Voting Rights Act. *Amicus* accordingly desires to file this brief in order to show that implementation of the plans at issue should be enjoined for failure to meet the requirements of the Voting Rights Act.

The respondents have consented to the filing of a brief by the *amicus curiae,* but the petitioners have not.

Wherefore the Lawyers' Committee for Civil Rights Under Law seeks leave to file the attached brief *amicus curiae.*

Respectfully submitted,

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Attorneys for Amicus Curiae.

a dozen past Presidents of the American Bar Association, a number of law school deans, as well as many of the nation's leading attorneys. Through its national office, and its offices in Jackson, Mississippi, and a number of other cities, the Lawyers' Committee has actively engaged the services of over a thousand members of the private bar in addressing legal problems in such areas as voting, education, employment, housing, and the administration of justice.

One of the highest priorities of the Lawyers' Committee has always been the Voting Rights Act, and it has appeared before this Court in Voting Rights Act cases both as counsel for parties, *Allen v. State Board of Elections*, 393 U.S. 544 (1969); *Connor v. Waller*, 95 S.Ct. 2003 (1975), and as *amicus curiae*, *Georgia v. United States*, 411 U.S. 526 (1973). The Lawyers' Committee filed a brief *amicus curiae* in this case in support of respondent's petition for rehearing *en banc* in the court of appeals. We believe that this case presents issues which will have a profound effect on the administration of the Act, whose special remedies (including section 5) have now been extended for seven more years. P.L. 94-73.[1]

---

[1] *Amicus curiae* believes that if the courts below are held to have acted properly in reaching the constitutional questions, the judgment should be affirmed because the court of appeals faithfully and correctly applied the pertinent standards of *White v. Regester*, 412 U.S. 755 (1973), in finding unconstitutional dilution.

The district court came to agree that the at-large plans were unconstitutional because they diluted black citizens' votes, and entered an order to that effect on March 27, 1972. While there may be a question as to the district court's jurisdiction, since the notice of appeal had been filed, the entry of the order is significant in evaluating the district court's "intensely local appraisal" of the plan, to which Petitioners' Brief frequently refers. E.g., Petitioners' Brief, p. 18.

ARGUMENT

The Voting Rights Act was adopted, in 1965, because traditional fourteenth and fifteenth amendment litigation had proven inadequate for the century-old task of guaranteeing the equal right to vote without regard to race. In place of the traditional litigation, Congress substituted a set of stringent remedies whose life has now been extended twice. The heart of these remedies is section 5, which Congress has described as "the front line defense against voting discrimination," S. Rep. No. 94-295, 94th Cong., 1st Sess. 18 (1975). *See also id.*, at 19; H.R. Rep. No. 94-196, 94th Cong., 1st Sess. 11 (1975):

> "The Committee is convinced that it is largely section 5 which has contributed to the gains thus far achieved in minority political participation, and it is likewise section 5 which serves to insure that that progress not be destroyed through new procedures and techniques."

This Court has repeatedly reaffirmed the broad sweep of section 5. *Allen v. State Board of Elections, supra; Perkins v. Matthews*, 400 U.S. 379 (1971); *Connor v. Waller*, 95 S.Ct. 2003 (1975). The latter two cases have addressed the specific issue involved in this case, namely, the extremely limited role of the federal district and circuit courts (except for the District Court for the District of Columbia designated in the Voting Rights Act itself) in passing upon questions that come within the sweep of section 5.

Amicus respectfully submits that this Court's cases, Congress' statements, and the recent history of voting dilution, all combine to dictate a holding in this case that the apportionment plans adopted by the East Carroll Parish Police Jury and School Board in 1968 and

thereafter "are not now and will not be effective as laws until and unless cleared pursuant to §5," and that the lower courts accordingly "erred in deciding the constitutional challenges to the Acts based upon claims of racial discrimination." *Connor v. Waller, supra,* 95 S.Ct. at 2003.

A.

Taking the simplest view of the matter, the record shows that two East Carroll Parish governmental bodies (Police Jury and School Board) covered by section 5 adopted reapportionment plans after November 1, 1964, which have never been cleared under the Voting Rights Act. Those facts, which are the elements of section 5 jurisdiction, should have barred the lower courts in this case from allowing the new plans to be implemented and should perforce have barred them from considering any fourteenth or fifteenth amendment questions.

This course was not followed, presumably, because of a mistaken belief that the pendency of reapportionment litigation in East Carroll Parish brought the plans within the "court decree" exception of *Connor v. Johnson,* 402 U.S. 690 (1971).[2] But that exception is limited to plans

[2]The original reapportionment suit, *Zimmer v. McKeithen,* involved only white plaintiffs and raised no fifteenth amendment issues. After the district court's initial determination that the existing apportionment was unconstitutional, there was never any adversity between the original parties: the plaintiffs consented to the defendants' adoption of the 1968 at-large plans and never took any further part in the lawsuit. This has been a frequent pattern in local redistricting, especially in Louisiana and Mississippi. In one case, involving Coahoma County, Mississippi, the plaintiffs and defendants were represented by two members of the same law firm.

If the court decree exception were extended to cover these cases, section 5 review would be precluded by judgments in which

[footnote continued]

actually devised or drawn by courts themselves, and does not extend to plans drawn by governmental bodies merely because those plans arise during litigation and are presented to courts which decline to hold them unconstitutional. *Johnson v. West,* C.A. No. 72-680 (D.S.C. June 14, 1972) (three-judge court). This distinction was made clear by this Court this year in the most recent chapter of the *Connor* litigation, *Connor v. Waller,* 95 S.Ct. 2003 (1975). There, after this Court and the district court had made it clear that the plan devised by the district court in 1971 should be modified at least by subdividing three named counties, the legislature did just that—it enacted the district court's plan as modified by the subdivision of the three counties. *See* 396 F.Supp. 1308 (S.D. Miss. 1975) (three-judge court). The district court proceeded to review the new plans on constitutional grounds, holding that they were still within the court decree exception to section 5. This Court summarily reversed, holding flatly that "the district court erred in holding that [the new plans] are not legislative enactments required to be submitted pursuant to section 5 of the Voting Rights Act of 1965." 95 S.Ct. at 2003.

The limited scope of the court decree exception was confirmed by Congress when it extended the Voting Rights Act earlier this year. In an extensive discussion of the subject, the Senate Report discussed the recent *Connor* case, and said it was consistent with the principle of "primary jurisdiction for section 5 review." The Report went on to describe the appropriate procedure for

no racial discrimination issues were ever considered. Moreover, it is arguable that decrees of this sort, where a court which has enjoined the existing apportionment then goes on to review the constitutionality of a governmental body's *substitute* apportionment plan—even where there may be no challenge to the substitute plan—violates the "case or controversy" requirement of Article III of the Constitution of the United States.

courts to follow in reapportionment cases in section 5 jurisdictions:

> "Thus, for example, where a federal district court holds unconstitutional an apportionment plan which predates the effective date of coverage under the Voting Rights Act, any subsequent plan ordinarily would be subject to Section 5 review. In the typical case, the court either will direct the governmental body to adopt a new plan and present it to the court for consideration or else itself choose a plan from among those presented by various parties to the litigation. In either situation, the court should defer its consideration of—or selection among—any plans presented to it until such time as these plans have been submitted for Section 5 review. Only after such review should the district court proceed to any remaining fourteenth or fifteenth amendment questions that may be raised." S. Rep. No. 94-295, 94th Cong., 1st Sess. 18-19 (1975).

In this case, the petitioners themselves emphasize that the plans at issue are of legislative, not judicial, origin, Petitioners' Brief, p. 14, a fact which would be plain from the record in any event. For this reason alone, the district court should have refrained from upholding, and the court of appeals was correct (though for the wrong reasons) in voiding, the reapportionment plans presented by the Police Jury and School Board in this case.

B.

Excluding section 5 jurisdiction was especially erroneous here because this case illustrates virtually all the problems that have led Congress and this Court to emphasize the importance of section 5. First of all, it involves reapportionment, which has come to be recognized as the principal threat against which section 5 must

guard (and which led Congress this year to extend that section's operation for seven years, in order to cover the redistricting that will follow the 1980 census, *see, e.g.*, H.R. Rep. No. 94-196, *supra*, at 10-11). Secondly, it involves at-large elections, which are widely known as the single most effective device for diluting minority votes, and which have spread through section 5 jurisdictions in epidemic proportions since the passage of the Voting Rights Act. *See Perkins v. Matthews*, 400 U.S. 379, 389-90 (1971); H.R. Rep. No. 94-196, *supra*, at 10, 19-20; U.S. Comm. on Civil Rights, *The Voting Rights Act: Ten Years After* 204-327 (1975). These circumstances are highlighted by the graphic context of this particular change. The background is as follows:

By long-standing law, parishes in Louisiana have traditionally elected their police juries and school boards by single-member districts. Because of this fact, black voters in East Carroll Parish were able to elect several of these officials from single-member districts in 1966 and 1967, despite a long history of virulent discrimination in voting. *See United States v. Manning*, 205 F. Supp. 172 (W.D. La. 1962). In 1968, Louisiana suddenly reversed its long history of reliance on single-member districts, and amended its statutes to allow parishes to shift to at-large elections for school board and police jury. This change was submitted to the Attorney General, who objected to it in a letter citing East Carroll Parish as an example of discriminatory at-large elections. Letter of September 10, 1969 from Assistant Attorney General Jerris Leonard to Louisiana Attorney General Jack P. F. Gremillion, reprinted in *LeBanc v. Rapides Parish Police Jury*, 351 F. Supp. 783, 788-89 (W.D. La. 1969).[3] Accordingly, at

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[3] With specific reference to East Carroll Parish, the Attorney General's objection stated:

[footnote continued]

the time the district court entered the order now on appeal (as well as its earlier 1968 order) there was no authority in state law for at-large elections of parish police juries or school boards.

As the petitioners point out, Louisiana officials sought to have the Attorney General reconsider his objection to the enabling legislation, arguing especially that the objection was unnecessary since any parish that changed to at-large elections in reliance upon the enabling legislation would have to submit its new plan separately. Petitioners' Brief, p. 6. Based on this representation, the

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An example of such dilution has taken place in East Carroll Parish. Our available statistics show that in that parish, the number of registered white voters exceeds the number of registered Negro voters. However, in several of the wards, including Wards 1 and 3, Negro voters out-number white voters. Prior to a recent reapportionment suit (Zimmer v. McKeithen, Civil Action No. 13927, W.D., La., December 2, 1968), all police jury and school board members were elected by the voters of their respective wards. According to our records, in 1966, a Negro candidate was elected to membership on the school board from ward 3. In 1967, two Negroes were elected to the police jury from wards 1 and 3.

On November 18, 1968, the East Carroll Parish Police Jury, in special session, adopted a resolution which provided that all new police jurors be elected at-large throughout the parish. This resolution was incorporated in the reapportionment order and extended thereby to include all new school board members. Since this decision, two Negro candidates for school board offices, one from ward 1 and the other from ward 3, have been defeated in at-large elections.

We further note that under the provisions of Act 561, any concentration of Negro voting power would be subject to dilution by the creation of special school board election districts, the boundaries of which need have no relation to existing or future ward boundaries.

Attorney General in 1972 withdrew his objection to the enabling legislation, expressly conditioned, however, on the understanding that no school board and police jury election changes under the state legislation would be implemented until and unless submitted and cleared pursuant to section 5. Letter of April 14, 1972 from Assistant Attorney General David L. Norman to John F. Ward, Jr. (petitioners' counsel).

In light of these circumstances, allowing East Carroll Parish officials to adopt plans calling for at-large police juries and school boards, in the face of section 5 determinations to the contrary, would have been a serious abuse of discretion even if the district court had had any discretion in this area. Accordingly, in deciding to proceed under the fourteenth and fifteenth amendments, the lower courts erroneously ignored the requirements of the Voting Rights Act.

CONCLUSION

Congress has gone to extraordinary lengths, as this Court has recognized, to make certain that the highly effective remedy provided in section 5 be extended over as broad a field as possible. The orders of the lower courts ignored this fact, and they did so in a case which, of all cases that could be imagined, calls for administration of Congress' remedy. The judgment below should therefore be vacated with instructions to remand the case to the district court for further proceedings in accordance with section 5. (As in *Connor v. Waller*, if

elections approach with no new plan cleared under section 5 of the Voting Rights Act, the district court has the discretion to impose its own plan, but that plan must be measured by the standards of this Court's cases, including *Chapman v. Meier*, 420 U.S. 1 (1975).)

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October 16, 1975